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**BEFORE THE STATE WATER
RESOURCES CONTROL BOARD**

In the Matter of the State Water Resources)
Control Board (State Water Board))
Hearing to Determine whether to Adopt a)
Draft Cease & Desist Order against)
California American Water Regarding its)
Diversion of Water from the Carmel River)
in Monterey County under Order WR 95-10)

Hearing Date: July 23 - 25, 2008

Carmel River in Monterey County

EXHIBIT MPWMD-SP8

MONTEREY PENINSULA WATER MANAGEMENT DISTRICT

December 21, 1988

ORDINANCE NO. 39

AN ORDINANCE AUTHORIZING THE MONTEREY
PENINSULA WATER MANAGEMENT DISTRICT
TO IMPLEMENT A WATER DEDICATION PLAN
AND TO INVITE PROPOSALS TO
FINANCE A WASTEWATER RECLAMATION PROJECT

FINDINGS

1. The Monterey Peninsula Water Management District (the District) has found and determined that it is in the best interest of the District and the inhabitants of the District to provide for the construction of a wastewater treatment plant (the "Reclamation Project") to produce subpotable water which can be used for the irrigation of greenbelt areas within the District.

2. The Reclamation Project will be owned and operated by the Carmel Sanitary District ("CSD") and the Pebble Beach Community Services District ("PBCSD") pursuant to a joint ownership and operating agreement or by a joint powers agency established by such agencies.

3. It is estimated that the production of subpotable water by the Reclamation Project will lessen consumption of the limited potable water resources available on the Monterey Peninsula by at least 800 acre feet per dry year, thus liberating such potable water for other uses (such water being herein called "Franchise Water") within the California-American Water Company ("Cal-Am") service territory.

4. The District has determined that the most desirable and cost effective method of financing the costs of construction and operating the Reclamation Project is to provide a permanent dedication of a portion of the Franchise Water to users who shall guarantee payment of all costs of constructing, equipping, and operating the Reclamation Project. The value of any guarantee, however, is limited to the creditworthiness of the guarantor.

5. The District has determined that the Reclamation Project will benefit the public good by increasing the supply of potable water available for new use, by reducing the existing demand for potable water, or for reserve water. The reduction in demand will reduce production impacts upon the environment. The District has determined that the maximum portion of the Franchise Water which may be appropriately dedicated to users in order to provide for the construction, equipping and operation of the Project shall not exceed 400 acre feet per year, or fifty (50%) percent of the Franchise Water as set forth in Finding 3 above, whichever amount may be less. Dedication of less Franchise Water will confer an even greater benefit upon the community at large.

6. The District has determined that it is necessary (i) to establish a formal manner and process for selection of a Fiscal Sponsor or Sponsors (as hereinafter defined) who will assume responsibility for guaranteeing or assuring payment of costs of constructing, equipping and operating the Reclamation Project, (ii) to establish the manner in which a portion of the Franchise

Water shall be dedicated to the use and benefit of property owned by the Fiscal Sponsor or Sponsors, and (iii) to provide for other agreements and procedures as are necessary to provide for the construction and operation of the Reclamation Project and for the sale of reclaimed, subpotable water produced by the Reclamation Project.

7. The District has determined that it is necessary to identify potential Fiscal Sponsors who may be able and willing to guarantee payment of costs of constructing, equipping and operating the Reclamation Project prior to the District's decision to approve or reject participation in the Reclamation Project. Identification of potential Fiscal Sponsors will enable a more accurate analysis of both the quality of any guarantee and consequences of the Reclamation Project and its potential impacts. This Ordinance shall not constitute approval of the Reclamation Project, or approval of the Reclamation Project financing plan by the District. This Ordinance shall not commit the District to select a Fiscal Sponsor or to approve the Reclamation Project or to approve the Reclamation Project financing plan.

NOW THEREFORE BE IT ORDAINED BY THE MONTEREY PENINSULA WATER MANAGEMENT DISTRICT that the following shall hereby be adopted and approved to implement a Water Dedication Plan and invite proposals to finance a Wastewater Reclamation Project.

PART I. PURPOSE

It is the purpose of this ordinance to establish a plan which will enable the financing of a Wastewater Reclamation Project to produce subpotable water for greenbelt irrigation, to lessen near term consumption of limitable potable water supplies, and to enable the reuse of potable water supplies which are freed by reason of the Reclamation Project. The financing plan requires dedication of a portion of the potable water freed by the Reclamation Project in return for guarantees of fiscal responsibility. This ordinance establishes a process, in the event the Reclamation Project is later approved by the District, for the dedication of a portion of the potable water freed by the Reclamation Project, authorizes the General Manager to invite proposals to enable later selection of Fiscal Sponsors for the Reclamation Project, and establishes criteria for that selection process. This Ordinance, in the event the Reclamation Project is approved, enables the grant of water use permits which represent vested property rights of the fiscal sponsor, and amends the District's Rules and Regulations respecting aspects of this Ordinance which shall have continuing effect.

PART II. SELECTION OF FISCAL SPONSORS

A. Authority to Invite Proposals. The General Manager shall invite proposals from persons, entities and/or public

entities within the District in order to finance all Capital Costs and Net Operating Deficiencies including Ancillary Project Costs (but in any event no longer than twenty years). The invitation of proposals shall provide such information as is necessary for an applicant to assess the Financial Commitment required to finance the Reclamation Project, including but not limited to the estimated Capital Costs of the Reclamation Project, a construction engineer's report concerning the feasibility of the Reclamation Project, and the estimated Operating Revenues, Operation and Maintenance Expenses, and Net Operating Deficiency including Ancillary Project Costs for the Reclamation Project during its useful life (but in any event no longer than twenty years).

The invitation shall also describe the nature and extent of the Water Entitlement which will be dedicated in consideration for the Financial Commitment of the Fiscal Sponsor/Sponsors. The invitation shall further state that, in the event the Reclamation Project is approved by the District, only parcels which are situated within the existing service areas of the California American Water Company (Cal-Am) shall be eligible for a dedication of a portion of the Water Entitlement, and that any proposed use of any portion of the Water Entitlement must be consistent with planned uses. The invitation shall provide notice that this Ordinance does not alter, affect, or preempt the land use planning authority of the county or any city, and that the Fiscal Sponsor/Sponsors shall be solely responsible for full

and complete compliance with all applicable land use planning procedures.

The invitation shall further state the nature and extent of the Financial Commitment required of the Fiscal Sponsor/Sponsors, as well as any terms or conditions pursuant to which such Financial Commitment may be limited or extinguished. Such terms may include a provision permitting the Fiscal Sponsor to terminate its Financial Commitment so long as (i) all Capital Costs of the Project have been paid as provided for (or if the bonds or other obligations issued to finance the Capital Costs of the Project will have been paid or otherwise provided for) and (ii) the Operating Revenues (adjusted upward, if necessary to ensure that rates for reclaimed water are imposed at the maximum rate imposed by Cal-Am) for potable water for the most recent three (3) fiscal years for which financial data is available are at least equal to 125% of Operation and Maintenance Expenses for such fiscal years.

Any such financial commitment shall be required to be guaranteed by an irrevocable and unconditional letter of credit or other comparable financial guarantee in form and substance satisfactory to the District issued by a banking or other financial institution whose long-term debt is rated in one of the two highest rating categories by at least one nationally recognized rating agency. An alternate guarantee may be required of any public agency Fiscal Sponsor, provided however, that such guarantee shall not impair the security of the District.

The invitation shall further state that the District or another Public Participant is willing to issue bonds or other obligations sufficient to finance the Capital Costs of the Reclamation Project. If bonds or other obligations are issued by the District or any Public Participant to finance the Capital Costs of the Reclamation Project, the financial commitment of the Fiscal Sponsor or Sponsors shall be required to guarantee the timely payment of such bonds or other obligations in accord with the provisions of Part VII of this Ordinance, and shall enable the bonds to qualify for a rating in one of the two highest rating categories from at least one nationally recognized rating agency. Should the bonds be purchased directly by the Fiscal Sponsor/Sponsors at the time of issuance and not receive the required rating, all bonds shall have a limitation prohibiting re-sale without the prior written consent of the District, and shall provide for relief and complete discharge of District's or other Public Participants' obligations to satisfy payment of bond interest and/or principal if, (a) the Fiscal Sponsor/Sponsors holding the bond should default upon their fiscal guarantee, and (b) there shall be in complete indemnification to District by reason of the letters of credit or other security interest provided by the Fiscal Sponsor/Sponsors.

The invitation shall further state a date and time by which timely responses must be delivered to the District office. This date shall not be less than thirty (30) days following issuance of the invitation for proposals to finance the Reclamation

Project. Each response shall be reviewed by the General Manager as an application to participate as a Fiscal Sponsor.

B. Criteria for Selecting Fiscal Sponsors

Following the time and date in which an applicant may submit a timely response to the District's invitation, the General Manager shall review each application, and if the application appears to be incomplete, shall request the responding party submit additional information. The General Manager shall not receive or process any untimely response. The General Manager within a further period not to exceed thirty (30) days shall review each application which is complete and timely and shall rate each applicant on the basis of the following criteria:

1. Ability to Finance.

Applicants shall be evaluated as to their capability to provide the Financial Commitment to guarantee financing for the Capital Cost, Net Operating Deficiencies and Ancillary Project Costs of the Reclamation Project and to eliminate risk to the District and Public Participants in accord with the provisions of Part VII of this Ordinance. If the applicant is requesting to finance less than the total Capital Cost and the Net Operating Deficiencies of the Reclamation Project, the applicant will provide adequate assurances that it shall cooperate with other Fiscal Sponsors to ensure and guarantee that the entire Financial Commitment shall be satisfied. Sponsor applicants will be ranked by both the quality of their Financial Commitment (the means and the extent to which Capital Cost and net Operating Deficiencies

shall be guaranteed by the Fiscal Sponsor), and by the extent to which the Sponsor applicant requests to finance the entire Reclamation Project costs. Preference shall be given to any applicant or applicants who singly or collectively will assure or guarantee 100% of the Financial Commitment (Reclamation Project Capital Costs and Net Operating Deficiencies) without contribution by District.

2. Amount of Franchise Water Required

Applicants shall identify the annual quantity of Water Entitlement required as consideration for providing the Financial Commitment by the applicant. Preference will be given to the applicant or applicants who will assure or guarantee the full Financial Commitment for the Reclamation Project for the smallest annual Water Entitlement.

3. Location of Use

Applicants shall identify by full legal description and by common address the location of each parcel of land upon which a portion of the potable Water Entitlement is proposed to be dedicated (all proposed Benefited Properties). An application shall be accepted only if it proposes utilization of the entire Water Entitlement within the existing service area of the California-American Water Company.

4. Type of Use

Applicants shall identify the planned uses pursuant to general plans and zoning (e.g. commercial, residential or industrial) to which the applicant will apply the Water

Entitlement, the status of construction or development of the applicant's projects, the estimated amount of annual water usage, and the estimated number and types of potential connections for such projects. It shall be mandatory for all such applications to apply the Water Entitlement in a manner consistent with planned uses. Preference shall be given to those applications which singly or conjunctively can cause implementation of the complete Reclamation Project with the smallest annual dedication of Franchise Water.

5. Date for Full Use

Applicants shall identify the projected date by which the full annual Water Entitlement shall be completely utilized, and any information which may relate to interim potable water use on Benefited Properties. Preference shall be given to those applications which propose use of Franchise Water at the most distant future date. Preference shall also be given to those applications which propose to phase the use of Franchise Water over time.

6. Alternative Potable Water Supplies

Applicants shall identify whether another or alternate supply of water, including but not limited to groundwater or subpotable water, is reasonably available to such applicant to supply all or a portion of its water needs. Preference shall be given to those applicants which have no alternative water supply.

7. Use of Subpotable Water

Applicants shall identify whether the applicant is at the

present time using potable water for irrigation, and whether the applicant is willing to voluntarily relinquish that potable water use in exchange for a commitment to receive reclaimed, subpotable water from the Reclamation Project. Preference shall be given to these applicants.

C. Recommendation to the Board The General Manager shall submit a recommendation to the Board as to the applicant or applicants who based upon the above criteria are best suited to act as Fiscal Sponsor/Sponsors for the Reclamation Project, together with the basis for such selection. The General Manager shall further make a recommendation as to the quantity of Franchise Water required for dedication as the annual Water Entitlement for use by the Fiscal Sponsor/Sponsors. If more than one applicant is recommended to act as a Fiscal Sponsor, the General Manager shall disclose the manner in which the financial commitment and the corresponding Water Entitlement is to be divided among such Fiscal Sponsors, and the adequacy of assurances that the Fiscal Sponsors can function cooperatively.

D. Board Approval The Board shall review the recommendations of the General Manager in its action on whether or not to proceed with the Reclamation Project. The Board shall determine the extent to which these recommendations respecting Fiscal Sponsor selection shall be approved. Should more than one application be received by prospective Fiscal Sponsors for the Reclamation Project, the Board will hold a public hearing to receive comments from all applicants and other interested parties

prior to action on the recommendations of the General Manager. In the event the Reclamation Project is approved, the Board thereafter shall authorize the General Manager to issue the permits described in Rule 23.5 of the District's Rules and Regulations (Part III of this Ordinance) and to negotiate such contracts and agreements as are required to ensure that Cal-Am shall provide the Water Entitlement to the Fiscal Sponsor/Sponsors as described in Part IV of this ordinance. Any Fiscal Sponsor/Sponsors selected by the Board shall assure or guarantee the Financial Commitment in such manner as determined acceptable to the Board, and shall hold harmless, indemnify, and defend the District from any expenses, costs, and/or risks associated with the Reclamation Project as the Board deems appropriate. This Financial Commitment shall also be guaranteed by a renewable letter of credit or other financial guarantee issued by a banking or other financial institution whose long-term debt is rated in the two highest rating categories by at least one nationally recognized rating agency; this guarantee shall be provided in the manner and to the extent as determined by the District Board.

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PART III. PERMITS FOR WATER FROM THE CAL-AM WATER DISTRIBUTION SYSTEM DEDICATED FOR USE IN CONNECTION WITH THE PLAN TO FINANCE THE WASTEWATER RECLAMATION PROJECT

A. Issuance of Water Use Permits. Upon Board Selection of all Fiscal Sponsor/Sponsors pursuant to Part II of Ordinance No. 39 and upon irrevocable commitment by those sponsors to underwrite, be responsible for, assure and guarantee payment of the Financial Commitment (Capital Costs and Net Operating Deficiencies and Ancillary Project Costs of the Reclamation Project recorded by the agreements required by Part VII of this Ordinance), the General Manager shall issue Water Use Permits to the Fiscal Sponsor/Sponsors authorizing the expansion and extension of the Cal-Am water distribution system to provide water service and connections for the benefit of the properties identified in the application(s) of the Fiscal Sponsor/Sponsors (such properties hereinafter referred to as the "Benefited Properties"). Each Water Use Permit shall grant an irrevocable property interest upon one or more Benefited Parcels for the use and benefit of a specified quantity of potable water per year (in acre feet) produced by the Cal-Am water distribution system. Water Use Permits shall be subject only to the following limitations, (1) the permit shall not limit the power of the District to curtail water use in the event of a water emergency, as defined in Section 332 of the Monterey Peninsula Water

Management Act; (2) the permit shall not relieve or reduce any obligation of the recipient of water to pay customary fees, connection charges, use fees, surcharges, taxes, utility taxes, and/or any other customary monetary obligation which may be imposed by the California Public Utilities Commission, Cal-Am, District, or other Public Participants upon water users of the same class within the California-American Water Company service area, including but not limited to fees and charges due and payable to the District by reason of Rule 24 of the District's Rules and Regulation; (3) the permit shall enable present use of the Water Entitlement only upon the commencement of operation of the Reclamation Project and upon the continuing financial assurance or guarantee by the Fiscal Sponsor(s) relating to the payment of Net Operating Deficiencies for the Reclamation Project; (4) notwithstanding any other provision of this Ordinance, once a new water connection is established through use of all or a portion of a Water Entitlement, the water user shall be treated in a manner equal to any other Cal Am water user and shall not be entitled to preferential access to water over any other water user of the Cal Am water distribution system. The revocation and termination of any Water Use Permit shall not diminish or otherwise adversely affect present actual use of water by reason of a prior expansion or extension of the Cal-Am water distribution system through any connection previously made pursuant to such Water Use Permit. Permits issued pursuant to this Rule shall represent a vested property interest upon

issuance and shall not be subject to revocation or cancellation except as expressly set forth in subparagraph D below. The Water Entitlement granted by each Water Use Permit shall not be subject to reallocation pursuant to District Rule 30, nor shall it be terminated or diminished by reason of any water emergency, water moratorium or other curtailment on the setting of meters for the California-American Water System, nor shall it otherwise be subject to reallocation pursuant to District Rule 30, nor shall it be terminated or diminished by reason of any water emergency, water moratorium or other curtailment on the setting of meters for the California-American Water System, nor shall it otherwise be subject to diminishment or revocation, except in the event that a Water Use Permit is revoked or cancelled as provided by subparagraph D below.

B. Water Use Permit Provisions. Each Water Use Permit shall be issued by the General Manager with respect to a single Benefited Property and shall identify:

- (1) the nature (industrial/commercial/residential) and location of the water use to be applied to each Benefited Property, and the consistency of such water use with existing land use and zoning plans;
- (2) the number and nature of connections projected for each Benefited Property; and
- (3) the projected water use required by each connection proposed upon the Benefited Property.

C. Amendment of Water Use Permits. Each Fiscal Sponsor, as owner of any Benefited Property, shall, upon request, be entitled to an amendment to any Water Use Permit to reduce, or increase, or change the number and type of connections and water use with respect to any Benefited Property owned by such Fiscal Sponsor, provided that in no event shall the aggregate amount of estimated annual water usage for the Benefited Properties of that Fiscal Sponsor/Sponsors exceed the aggregate Water Entitlement allocated to the Benefited Properties of that Fiscal Sponsor, and provided further that the reallocation of connections shall be allowed only among those locations identified in the Fiscal Sponsor's application. Water Use Permits may be transferred and assigned only to successors-in-interest to the Benefited Properties.

D. Revocation and Termination of Water Use Permits. Each Water Use Permit shall provide that it shall be revoked and terminated in the event that the Fiscal Sponsor shall default in any material manner upon its obligation, assurance and guarantee of the Financial Commitment for the Reclamation Project, provided that nothing herein shall preclude the Fiscal Sponsor from disputing in good faith any claim of default made by the District nor shall the District terminate or revoke any Water Use Permit unless the Fiscal Sponsor shall have been given notice and a reasonable opportunity to cure any such default so long as such opportunity to cure shall not result in any payment default to

any bondholders. In addition, notwithstanding any other provision of this Ordinance, each Water Use Permit which on or after January 1, 2075, embodies an annual Water Entitlement in excess of requirements for planned land uses on the Benefited Properties shall be subject to revocation and termination in the sole discretion of the District. Prior to any termination and revocation pursuant to this paragraph, the Fiscal Sponsor shall be entitled to notice and a hearing, and any termination shall be subject to appeal to the Board pursuant to Rule 70 of the District Rules and Regulations. The revocation and termination of any Water Use Permit shall not diminish or otherwise adversely affect present actual use of water by reason of a prior expansion or extension of the Cal-Am water distribution system through any connection previously made pursuant to such Water Use Permit.

E. Cal-Am System Expansion/Extension Pursuant to Water Use Permits.

So long as the Reclamation Project has commenced operation so long as all assurances or guarantees required for both payment of Capital Costs and payment of Net Operating Deficiencies for the Reclamation Project continue to be met, each Water Use Permit shall entitle the owner of a Benefited Property to service to be provided by the Cal-Am water distribution system for such Benefited Properties, including the installation of water meters and mains as necessary, upon presentation to the District by the Fiscal Sponsor of the following:

- (1)
 - (a) A statement by the Fiscal Sponsor setting forth the annual capacity of water use that the Fiscal Sponsor will exercise through such expansion/extension of the Cal-Am water distribution system, and the nature of the uses to which such water is intended to be applied in the future; and
 - (b) a valid municipal or county building permit which will allow construction upon the Benefited Property; or
 - (c) a complete set of architectural contract drawings; or
 - (d) other documentation sufficient for the District to determine quantity and the capacity for annual water use of the Benefited Property and the number and type of each requested connection.
- (2) The payment of any customary fees and connection charges required by both Cal-Am and the District of water users within the Cal-Am service area, calculated upon the basis of the annual water usage capacity for the Benefited Property set forth in the Fiscal Sponsor's statement, including but not limited to fees and charges due by reason of Rule 24 of the District's Rules and Regulations.

Upon the filing of the information and payment of the fees required above, the General Manager shall make a notation on the Water Use Permit indicating the location, capacity and nature of each connection requiring a present expansion/extension of the Cal-Am water distribution system. Estimated usage shall be based

upon the water use capacity for proposed or planned development upon Benefited Properties. The aggregate water use represented by such expansions/extensions of the Cal-Am water distribution system, shall not exceed the Water Entitlement evidenced by such Water Use Permit. In the event that a Fiscal Sponsor requests an expansion/extension of the Cal-Am water distribution system with respect to less than all of the Water Entitlement evidenced by such Water Use Permit, the General Manager shall make a notation on such Water Use Permit indicating the remaining Water Entitlement.

The Fiscal Sponsor shall be entitled to increase the annual water use for any Benefited Property to which the Fiscal Sponsor has previously applied a portion of the Water Entitlement through prior expansions/extensions of the Cal-Am water distribution system upon presentation of the information and payment of the fees set forth in this subparagraph E, provided that any such increases in water use for the Benefited Properties shall not exceed in the aggregate the total Water Entitlement of the Fiscal Sponsor for all Benefited Properties.

Cal-Am shall be authorized to execute a contract with the Fiscal Sponsor to enable the provision of water service consistent with the Water Entitlement evidenced by the Water Use Permit issued under this provision.

Such agreement with Cal-Am shall at the Fiscal Sponsor's option be a condition precedent to the providing of the Fiscal Commitment by the Fiscal Sponsor. The actions required to be

taken by the General Manager pursuant to this paragraph shall be ministerial, non-discretionary acts which shall not be affected by any water moratorium, water emergency, allocation decision or other curtailment on the setting of new water meters for the Cal-Am water distribution system and shall be enforceable by mandamus.

PART IV MODIFICATION OF ALLOCATION COMPLIANCE RULE

The provisions of Rule 41 B of the District's Rules and Regulations shall be amended to add the following sentence:

"Neither the Board of Directors nor the General Manager shall take any action pursuant to this paragraph which would prohibit, limit, or affect the expansion/extension of a water distribution system by reason of a Water Use Permit as defined by Rule 23.5(F)."

**PART V MUNICIPAL
MODIFICATION OF MULTIPLE UNIT ALLOTMENT PROVISIONS**

The provisions of Rule 30 of the District's Rules and Regulations shall be amended to add the following sentence:

"Each allotment shall include water which has been irrevocably committed and dedicated for use pursuant to a Water Use Permit, and those dedicated water supplies shall be separately

identified as available exclusively to Benefited Properties as a vested property interest."

PART VI AGREEMENTS TO PROVIDE FOR WATER ENTITLEMENT

The General Manager is authorized to negotiate and, subject to the prior approval or ratification by the Board, to execute agreements with Cal-Am and the Fiscal Sponsor as are necessary or desirable to assure to the Fiscal Sponsor/Sponsors that the Water Entitlement will be provided to the Benefited Properties. The District will cooperate with the Fiscal Sponsor/Sponsors and Cal-Am in securing any approval required from the California Public Utilities Commission in connection with such agreements.

The District shall acknowledge in any such agreement that the Fiscal Sponsor(s) have made the Financial Commitment in reliance upon the provisions of this ordinance, and shall agree not to amend the provisions of this ordinance in any manner which would impair the interest of such Fiscal Sponsor(s) or any successor or assign.

PART VII AGREEMENTS TO GUARANTEE THE PAYMENT OF PROJECT CAPITAL COSTS AND NET OPERATING DEFICIENCIES

The General Manager is authorized to negotiate and, subject to the prior approval or ratification by the Board, to execute

agreements with Cal-Am as are necessary or desirable to assure to the Fiscal Sponsors, their agents, or other parties as are necessary or desirable to assure and guarantee, within the scope and plans for the Reclamation Project as specified in the Engineer's Report, the full payment of Reclamation Project Capital Costs and Reclamation Project Net Operating Deficiencies and Ancillary Project Costs with minimal fiscal risk to the District or any other Public Participant. The agreements shall not require the Fiscal Sponsor to incur any cost or liability for changes which expand the scope of the Reclamation Project. Furthermore, the agreement shall provide reasonable controls over expenditures and accounting of expenditures.

The Financial Commitment provided by the Fiscal Sponsor/Sponsors shall be secured by an irrevocable renewable letter of credit or other comparable financial guarantee issued by a banking or other financial institution whose long term debt is rated in the two highest rating categories by at least 20 years following the completion date one nationally recognized rating agency. The letter of credit or other comparable financial guarantee securing the financial obligation of the Fiscal Sponsor relating to the payment of Net Operating Deficiencies and Ancillary Project Costs may be provided separately from and subsequently to the financial guarantee relating to the payment of Capital Costs. The Fiscal Sponsor/Sponsors shall further provide a present irrevocable guarantee of direct and timely payment to the District of all

unpaid but then anticipated Reclamation Project Capital Costs and Reclamation Project Net Operating Deficiencies for at least 20 years following the completion date of the Reclamation Project in the event that,

(a) the letter of credit is revoked or expires, and is not immediately renewed or replaced through a banking institution with the qualifications set forth above, or

(b) if the issuing banking institution should lose the requisite rating qualification, and no replacement letter of credit from a banking institution which meets the rating criteria is provided to the District within a reasonable period of time as determined by the District.

The Fiscal Sponsor/Sponsors shall provide present security to the District in the manner and extent determined by the District Board to ensure satisfaction of those contingent liabilities, and if any banking institution has required a security interest as a condition upon the issuance of the letter of credit, the District shall also receive a secondary security interest in the same property.

Public agency Fiscal Sponsors may provide an alternative financial guarantee than stated by this Part, provided however, that such guarantee shall not impair the security of the District.

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PART VIII

AGREEMENTS WITH PUBLIC PARTICIPANTS

The General Manager is authorized to negotiate and, subject to the prior approval or ratification by the Board, to execute agreements as are necessary or desirable to provide for the construction, equipping and operation of the Reclamation Project. All financial commitments of the District for the construction, ownership and operation of the Reclamation Project shall be payable first from Operating Revenues of the facility including any reserves therefor, then from proceeds of any bonds or other obligations issued by the Public Participant to finance the cost of the Reclamation Project, then from the funds provided by the Fiscal Sponsor/Sponsors, and lastly from any other lawfully available funds. In the event that the Fiscal Sponsor/Sponsors request, or the Public Participants otherwise determine that it is appropriate, to issue bonds or other obligations in order to finance the Capital Cost of the Reclamation Project, the District shall cooperate with such Public Participants in providing for the issuance of such obligations.

PART IX

PURCHASE OF SUBPOTABLE WATER FROM THE
RECLAMATION PROJECT

The General Manager is authorized to negotiate and, subject to the prior approval or ratification by the Board, to execute agreements with the owners of golf courses within the Del Monte

Forest and with other potential users of subpotable water within the Cal-Am service areas (the "subpotable water users") for the purchase of subpotable water from the Reclamation Project. All agreements shall: (1) require the subpotable water users to purchase such subpotable water for a term not less than a period of twenty (20) years; (2) guarantee delivery to such subpotable water users of subpotable water from the Reclamation Project; (3) guarantee delivery to such subpotable water users of additional potable water from Cal-Am as may be necessary to fulfill the requirements of such subpotable water users in the event the Reclamation Project is incapable of providing subpotable water in sufficient quantities provided, however, that the use of potable water shall not be guaranteed during any water emergency declared by the Board pursuant to either Section 31026 of the California Water Code, or Section 332 of the Monterey Peninsula Water Management District Law; and (4) require the District to impose rates and charges for subpotable water sufficient to maximize payment for Operating and Maintenance Expenses and Capital Costs of the Reclamation Project, provided that such agreement shall guarantee that the price for subpotable water for all subpotable water users does not exceed the then prevailing price for potable water.

The General Manager shall establish a billing and collection procedure to ensure the timely collection of revenues under these agreements.

PART X

DEFINITIONS

For the purpose of this Ordinance and Rule 23.5, the following words shall have the meanings set forth below. Other words which are defined in Rule 11 to the Rules and Regulations, when used in this Ordinance shall have the meanings set forth therein, unless the context otherwise indicates.

"Ancillary Project Costs" means net revenues (gross revenues less allocable operation and maintenance costs and administrative and general costs as such terms are defined in accord with generally accepted utility practices) which Cal-Am shall not receive by reason of operation of the Reclamation Project. Ancillary Costs shall not include any return on assets of Cal-Am which have been removed from the water distribution system rate base by reason of the Reclamation Project. Ancillary Costs shall be reduced over time by net revenues received by Cal-Am by reason of sales of Cal-Am water (with respect to the benefitted properties) following the first date of Reclamation Project operation.

"Benefited Properties" means those properties within the Cal-Am service area which have been identified within the application of the selected Fiscal Sponsor(s) and upon which Water Entitlements granted pursuant to a Water Use Permit may be utilized. For any public agency Fiscal Sponsor, the term "Benefited Properties" shall be defined as those properties owned entirely by the public agency and dedicated for public use.

"Cal-Am" means the California American Water Company, its successors and assigns.

"Capital Costs" as applied to the Reclamation Project or portion thereof means all or any part of:

(a) the cost of acquisition of all lands, structures, real or personal property, rights, rights-of-way, franchises, easements, and interests acquired or used for the Reclamation Project, inclusive of fees and commissions for acquisition;

(b) the cost of construction related to the Reclamation Project, including but not limited to demolition, repair, modification, replacement or renovation of existing structures, facilities, fixtures or equipment; cost of improvements and materials; direct and indirect Public Participation construction and administration expenses properly allocable to the Reclamation Project in accordance with generally accepted accounting principles; costs of painting, decorating, furnishing and landscaping; contractor and subcontractor profit; and costs related by reason of the Reclamation Project to plumbing, mains, tanks, or pipes which are modified, repaired, replaced, or renovated, whether owned by Public Participants or others.

(c) the cost of demolishing or removing any buildings, fixtures, equipment, or structures on land so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved;

(d) the cost of all machinery, piping, equipment and furnishings, including but not limited to the cost of machinery, piping, equipment and furnishings made obsolete or unusable to Cal-Am, Public Participants, or others by reason of the Reclamation Project;

(e) financing charges;

(f) interest prior to, during, and for a period after completion of the acquisition and construction of the Reclamation Project as determined by the District;

(g) provisions for working capital;

(h) reserves for routine or extraordinary repairs and replacements necessary to the Reclamation Project;

(i) the cost of architectural, engineering, planning, environmental analysis, financial, accounting, auditing and legal services, plans, specifications, estimates, administrative expenses, permits, fees, adverse claims, personnel and overhead costs (both direct and indirect to the extent properly allocable to the Reclamation Project), and other expenses necessary or incident to determining the feasibility of construction the Reclamation Project or incident to the planning, construction, acquisition, or financing of that Project, including, without limitation:

(1) payment during the construction period of the premiums for all title and other insurance, bonds, or undertakings required to be taken out and maintained with respect to any part of the Reclamation Project to

the extent such amounts are not paid by any contractor who constructs or installs any portion of the Reclamation Project;

(2) payment of the taxes, assessments and other fees or charges, if any, that may become payable during the construction period with respect to the Reclamation Project, or reimbursements thereof; and

(3) payment of expenses incurred in seeking to enforce any remedy against any contractor or subcontractor in respect of any default under a contract relating to the acquisition, construction or installation of the Reclamation Project.

"Financial Commitment" means the commitment of a Fiscal Sponsor or Sponsors to assume and guarantee payment of (1) the Capital Costs of the Reclamation Project (including the payment of the principal of and interest on any bonds or other obligations issued by any Public Participant to finance such costs), and (2) the Net Operating Deficiencies of the Reclamation Project for the entire period ending twenty years following the estimated completion date of the project (or for any shorter periods as permitted by the District), and (3) payment of all Ancillary Project Costs.

"Fiscal Sponsor or Fiscal Sponsors" means the person or persons (including partnerships, corporations, municipal corporations, or other public entities) selected to act as the Fiscal Sponsor/Sponsors pursuant to Part II of Ordinance 39,

which person or persons will be obligated, and liable for, and capable of paying the Capital Costs and Net Operating Deficiencies of the Reclamation Project.

"Franchise Water" means potable water which has been freed for new use by reason of subpotable water deliveries from the Reclamation Project.

"Net Operating Deficiency" as applied to the Reclamation Project means, for any fiscal year or portion thereof, the difference between the Operating Revenues and the Operation and Maintenance Expenses for such period.

"Operation and Maintenance Expenses" as applied to the Reclamation Project means all expenses and costs of management, operation, maintenance and repair of the Reclamation Project, including payments to be made by the Public Participants under agreements with Cal-Am for the purchase of subpotable water, debt service payments on all bonds or other obligations issued to finance the cost of the Reclamation Project, and all incidental costs, fees and expenses properly chargeable to the Reclamation Project, including reasonable depreciation and obsolescence charges or reserves therefore assuming straight line depreciation upon a useful life assumed to be thirty (30) years, amortization of intangibles and other bookkeeping entries of a similar nature.

"Operating Revenues" as applied to the Reclamation Project means all income, rents, rates, fees, charges and other moneys derived by the Public Participants from the ownership or operation of the Reclamation Project, including, without limiting

the generality of the foregoing: (i) all income, rents, rates, fees, charges or other moneys derived from the sale, furnishing and supplying of the reclaimed, subpotable water or from potable water supplied in lieu thereof; (ii) interest earnings on all revenues mentioned in (i) above, and on the reserve fund or on any other fund or account relating to the Reclamation Project, and (iii) insurance and condemnation proceeds resulting from damage to or destruction of the Reclamation Project facilities, or from the condemnation of the Reclamation Project; provided, that the term "Operating Revenues" shall not include customers' deposits or any other deposits subject to refund until such deposits have become the property of the Public Participants.

"Project" or "Reclamation Project" means the CSD/PBCSD wastewater treatment plant (including lands, facilities, equipment, furniture and fixtures).

"Public Participant" means any one or more of the following: the Monterey Peninsula Water Management District, the Carmel Sanitary District, the Pebble Beach Community Services District, or any successor public agency including but not limited to any joint powers agency formed by one or more of the above agencies.

"Water Entitlement" means 400 acre feet per year (or less) of potable water, and in no event more than fifty (50%) percent of the total amount of Franchise Water, which shall be the maximum portion of the Franchise Water which may be dedicated to land within the jurisdiction of the District for the purpose of providing for the payment of the Capital Cost, Ancillary Project

Cost, and Net Operating Deficiencies of the Reclamation Project.

"Water Use Permit" means a writing from the District which evidences the irrevocable dedication of the Water Entitlement as a property right enuring to the use and benefit of the Benefited Parcels. A Water Use Permit shall by non-discretionary ministerial action cause the present Expansion/Extension of the Cal-Am water distribution for Benefited Properties upon designation of the location of use, upon payment of applicable connection fees and charges. A Water Use Permit shall take the place of and be used instead of any Expansion/Extension Permit upon any Benefited Parcel.

PART XI

SEVERABILITY

If any subdivision, paragraph, sentence, clause or phrase of this ordinance is, for any reason, held to be invalid or unenforceable by a court of competent jurisdiction, such invalidity or unenforceability shall not affect the validity or enforcement of the remaining portions of this ordinance, or of any other provisions of the Monterey Peninsula Water Management District Rules and Regulations. It is the District's express intent that each remaining portion would have been adopted irrespective of the fact that one or more subdivisions, paragraphs, sentences, clauses, or phrases be declared invalid or unenforceable.

PART XII

PUBLICATION

The provisions of Part III of this Ordinance shall be published as Rule 23.5 of the Rules and Regulations of the Monterey Peninsula Water Management District. The provisions of Part X shall be published as subdivision F of Rule 23.5. The provisions of Parts IV and V shall amend Rule 41 B and Rule 30, respectively.

The remaining provisions of this ordinance shall not be published in those Rules and Regulations.

On motion of Director Davis, and second by Director Hughes, the foregoing ordinance is duly adopted this 13th day of February, 1989, by the following vote:

AYES: Directors Fisher, DeBerry, Lombardo, Davis, Heuer and Hughes

NAYES: Director Strasser Kauffman

ABSENT: None

I, Bruce Buel, Secretary to the Board of Directors of the Monterey Peninsula Water Management District, hereby certify that the foregoing is a full, true and correct copy of an ordinance duly adopted on the 13th day of February, 1989.

Witness my hand and seal of the Board of Directors of the Monterey Peninsula Water Management District this 14th day of February, 1989.


Bruce Buel, Secretary to the Board

ORDINANCE NO. 109

**AN ORDINANCE OF THE BOARD OF DIRECTORS OF THE
MONTEREY PENINSULA WATER MANAGEMENT DISTRICT
REVISING RULE 23.5 AND ADOPTING ADDITIONAL PROVISIONS TO
FACILITATE THE FINANCING AND EXPANSION OF THE CAWD/PBCSD
RECYCLED WATER PROJECT**

FINDINGS

1. The Monterey Peninsula Water Management District ("MPWMD") is charged under the Monterey Peninsula Water Management District Law with the integrated management of the ground and surface water resources in the Monterey Peninsula area.

2. MPWMD has general and specific power to cause and implement water conservation activities as set forth in Sections 325 and 328 of the Monterey Peninsula Water Management District Law.

3. In Ordinance No. 39, MPWMD found and determined that it was in the best interest of MPWMD and the inhabitants thereof to provide for the design and construction of a tertiary treatment facility at the wastewater treatment plant owned by the Carmel Sanitary District ("CSD," now the Carmel Area Wastewater District ("CAWD")) to produce recycled water which could be used in lieu of potable water for the irrigation of vegetated areas within the Del Monte Forest, a distribution system capable of distributing the recycled water from the facility to a point of distribution in the Del Monte Forest for further distribution to such vegetated areas, and recycled water irrigation systems on each of such vegetated areas (the "Original Project").

4. Ordinance No. 39 made various additional findings and set forth a method of financing the Original Project by selection of a Fiscal Sponsor who would guarantee the costs of the Original Project in exchange for a portion of the "Franchise Water" liberated by the use of recycled water, specifically the "Water Entitlement" as defined in Ordinance No. 39.

5. Pursuant to the provisions of Ordinance No. 39, MPWMD on October 3, 1989, adopted Resolution No. 89-21, A Resolution of the Board of Directors of the Monterey Peninsula Water Management District Approving the CSD/PBCSD Wastewater Reclamation Project, a Financing Plan Therefor and MPWMD's Participation in such Project and Financing Plan;

Selection of a Fiscal Sponsor pursuant to Ordinance No. 39; and Execution and Delivery of the Wastewater Reclamation Project Fiscal Sponsorship Agreement with Pebble Beach Company (the "Resolution"). The Resolution made various findings, approved the Original Project, approved a financing plan for the Original Project, selected Pebble Beach Company ("PBC"), J. Lohr Properties, Inc. ("Lohr"), and the Hester Hyde Griffin Trust ("Griffin") as the Fiscal Sponsors for the Original Project, dedicated a Water Entitlement of 365 acre feet annually ("af") to PBC, 10 af to Lohr, and 5 af to Griffin, approved the Wastewater Reclamation Project Fiscal Sponsorship Agreement (dated as of October 3, 1989) between MPWMD and PBC (the "Fiscal Sponsorship Agreement") and approved the issuance of Water Use Permits to PBC, Lohr, and Griffin to "evidence" the Water Entitlement.

6. These Water Use Permits authorize the expansion and extension of the Cal-Am water distribution system to provide connections to, and potable water service in specific annual quantities (in acre feet) for the use on and benefit of, specific properties identified in the Resolution and the Fiscal Sponsorship Agreement (such annual quantities being specified, and such properties being identified as the "Benefited Properties," in Exhibit "A" to the Fiscal Sponsorship Agreement as subsequently amended).

7. The Fiscal Sponsorship Agreement and the actions taken pursuant thereto provide suitable guarantees of payment of all costs of designing, constructing, equipping, and operating the Original Project as required by Ordinance No. 39. PBC, as stated in the Fiscal Sponsorship Agreement, has assumed the obligations of Lohr and Griffin as co-Fiscal Sponsors by providing all of the necessary guarantees and thus PBC is the sole Fiscal Sponsor for the Original Project for purposes of Ordinance No. 39 and the Fiscal Sponsorship Agreement.

8. All actions of MPWMD in the adoption of the Resolution, the terms of the Resolution itself, and the binding and enforceable effect of the Fiscal Sponsorship Agreement and all of its terms, and the obligations of MPWMD thereunder, were all validated by a final Judgment of Validation entered on July 12, 1990 in a validation action brought by MPWMD (Monterey Superior Court Case No. M21594).

9. As contemplated by the Fiscal Sponsorship Agreement, to pay for the Capital Costs of the Original Project, MPWMD issued interest-bearing Certificates of Participation in 1992 in the principal amount of \$33.9 million, the full payment of which (both principal and

interest) is guaranteed by PBC.

10. The facilities comprising the Original Project have been completed and are owned and operated either by CAWD or by the Pebble Beach Community Services District ("PBCSD") pursuant to an agreement between such agencies.

11. It was originally estimated that the production of recycled water by the Original Project would lessen consumption of potable water by at least 800 acre feet per dry year, thus liberating such potable water for other uses.

12. The performance of the Original Project has not met the expectations of the parties to the Fiscal Sponsorship Agreement or the expectations of the parties to the Related Agreements (as defined therein), either with regard to quantity or quality, due to a number of factors beyond the consideration of any of the parties participating in the Original Project. Prominent among these factors are the salt-sensitivity of the dominant grass species planted in the greens of many of the golf courses, inadequacy of the drainage facilities to conduct accumulated salts away from the greens, smaller than anticipated amounts of secondary effluent due to decreased flows of influent to the CAWD wastewater plant (resulting in part from consumers' water conservation efforts), increased amount of salinity in the recycled water due to reduced influent flows caused by water conservation efforts, increased salinity added by water softening units (the demand for which increased as the source water became more saline), internal wastewater plant processes contributing additional salinity loading, the lack of sufficient data concerning the composition of the secondary effluent produced by the CAWD Wastewater Treatment Plant or concerning the water quality and water quantity requirements for golf course irrigation, and the absence of any seasonal storage of recycled water

13. Recycled water with high salinity has the potential to cause short-term and long-term environmental damage to vegetation and soil resources, which could in turn have economic consequences.

14. Cal-Am has been limited in its ability to deliver potable water by California State Water Resources Control Board (SWRCB) Order No. 95-10, dated July 6, 1995, based upon a finding by SWRCB that Cal-Am does not possess the legal right to divert from the Carmel River system the amount of water historically (and presently) being diverted by Cal-

Am. As a consequence, the SWRCB in Order No. 95-10 limited production by Cal-Am to 11,285 AF (currently) from the Carmel River system, and ordered Cal-Am to implement actions to terminate its unlawful diversions from the Carmel River, and in the interim to maximize its production from the Seaside Groundwater Basin.

15. The SWRCB has concluded that the Water Entitlement is not subject to these limitations on production of water from the Carmel River system because the Original Project has provided a source of recycled water for irrigation of the golf courses and certain other vegetated areas within the Del Monte Forest, thereby enabling Cal-Am to reduce its diversions from the Carmel River system by the amount of recycled water thus used in lieu of potable water. The SWRCB requested that MPWMD obtain and submit to it information documenting that (a) the new use of potable water does not exceed the historic quantity of potable water provided by Cal-Am to the Del Monte Forest property, and (b) the quantity of Recycled Water put to beneficial use equals or exceeds the potable water use.

16. PBC is willing to assist, and MPWMD desires that PBC assist, with the financing of an expansion of the Original Project (the "Project Expansion"), in conjunction with PBC's continuing role in the financing and implementation of the Original Project. The Project Expansion, if and when implemented, will eliminate the need for reliance on supplemental potable water for the irrigation of vegetated areas within the Del Monte Forest as defined in Exhibit B to this ordinance (except in cases of an Interruption as defined in this ordinance), thereby conserving additional potable water. It has been estimated by the parties primarily involved in the planning of the Project Expansion (CAWD, PBCSD, PBC, and the Independent Reclaimed Water Users Group ("IRWUG")) that the Original Project together with the Project Expansion will produce sufficient quantities of Recycled Water each year to meet all of the irrigation needs of the Recycled Water users who presently have Recycled Water Sales contracts with MPWMD without the addition of any potable water thereto (except during an Interruption as defined herein).

17. The parties primarily involved in the planning of the Project Expansion (CAWD, PBCSD, PBC, and IRWUG) contemplate that the Forest Lake Reservoir, one component of the Project Expansion, when filled to its capacity of 420 acre feet, will provide storage sufficient for 60 days supply during the period when irrigation usage is the greatest. Thus, if the Forest Lake

Reservoir is filled, this storage will enable the Project to continue to provide Recycled Water even during a shutdown of the CAWD wastewater treatment plant or a break in (or other event preventing the continuous delivery of Recycled Water through) the distribution facilities “upstream” of the Forest Lake Reservoir.

18. Therefore, the parties primarily involved in the planning of the Project Expansion (CAWD, PBCSD, PBC, and IRWUG) have concluded that, after the Project Expansion is Completed, the use of supplemental potable water for irrigation on the Recycled Water Irrigation Areas, as defined in this Ordinance, will likely be necessary, if at all, if an Interruption is caused by one of the following circumstances: (1) the Forest Lake Reservoir is destroyed or otherwise rendered inoperable, or (2) the facilities conveying Recycled Water to Forest Lake Reservoir are destroyed or otherwise rendered inoperable at a time when storage in Forest Lake Reservoir has fallen below 50 acre feet, or (3) the facilities conveying Recycled Water from Forest Lake Reservoir to Recycled Water Irrigation Areas are destroyed or otherwise rendered inoperable, or (4) the CAWD wastewater treatment plant or the PBCSD transmission facilities are rendered unable to deliver Recycled Water to the Forest Lake Reservoir for a period of time that allows the Recycled Water then remaining in storage Forest Lake Reservoir to be exhausted, or (5) the quantities of wastewater entering the CAWD wastewater treatment plant are reduced to the extent that the CAWD wastewater treatment plant cannot produce sufficient quantities of Recycled Water to refill Forest Lake Reservoir and the Recycled Water stored therein is exhausted. Although unlikely, it is possible that other circumstances might cause an Interruption requiring use of potable water to supplement the Recycled Water being used to irrigate the Recycled Water Irrigation Areas.

19. The parties primarily involved in the planning of the Project Expansion (CAWD, PBCSD, PBC, and IRWUG) have conferred with and advised MPWMD that they have concluded that, given the limited availability of public funds, the most effective means of financing and implementing the Project Expansion will be to make a portion of PBC’s existing Water Entitlement available for separate sale and conveyance, and applying the proceeds therefrom to the costs of the Project Expansion and Original Project as more specifically described in Section Three of this ordinance.

20. This ordinance shall authorize PBC, on terms and conditions set forth in Section

Three of this ordinance, to separately sell and convey portions of its Water Entitlement for use on lands within the Del Monte Forest (as defined in Exhibit "B") not owned by PBC at the time that this ordinance is adopted, through which PBC will attempt to raise funds sufficient to finance all Capital Costs of the Project Expansion as set forth in Section Three hereof. This ordinance shall also revise and amend Rule 23.5 of the Rules and Regulations of the Monterey Peninsula Water Management District as set forth in Section Four hereof; and shall adopt other provisions to facilitate the financing of the Project Expansion, as more particularly described below.

21. Ordinance No. 39, which is among the body of actions and agreements supporting the issuance of MPWMD's Certificates of Participation as a tax-exempt financing and defining MPWMD's obligations to the holders thereof, remains in full force and effect, with all of its terms, except to the extent its terms are amended by the terms of this ordinance

22. It is in the public interest to maximize the use of Recycled Water. The Original Project has resulted in environmental benefits by reducing Cal-Am diversions from the Carmel River system. Annual Recycled Water deliveries from the Original Project have averaged approximately 664 af beginning in the 1994-1995 Water Year. The Project Expansion, if successfully accomplished, will increase the environmental benefits by (a) further reducing the demand for potable water from Cal-Am and its sources of supply, and (b) further reducing CAWD's discharges to the Carmel Bay Area of Special Biological Significance.

23. The Recycled Water Irrigation Areas, particularly the Del Monte Forest golf courses of international renown, are an important contributor to the economy within MPWMD. The Project Expansion will facilitate the increased use of Recycled Water by the Recycled Water Irrigation Areas without the use of substantial public funds, which should facilitate these contributions to the economy within MPWMD in the future.

NOW THEREFORE be it ordained as follows:

Section One: Short Title

This ordinance shall be known as the Recycled Water Project Expansion Supplemental Financing Ordinance of the Monterey Peninsula Water Management District.

Section Two: Purpose

It is the primary purpose of this ordinance to facilitate the financing of the Project Expansion in order to provide sufficient quantities of Recycled Water of a quality suitable for irrigation of even the most water quality-sensitive plants on the golf courses and other vegetated areas located within the Del Monte Forest ("Recycled Water Irrigation Areas"), and thereby to completely eliminate the use of potable water for such irrigation (except during an Interruption as defined herein). The Original Project has not to date produced sufficient quantities of Recycled Water of a quality suitable for all irrigation needs within the Recycled Water Irrigation Areas.

To assist MPWMD in monitoring the success of eliminating the use of potable water for irrigation of the Recycled Water Irrigation Areas, reports of the quantities of potable water introduced into the Project on a daily basis shall be submitted to MPWMD each week during an Interruption (as defined herein) and monthly at all other times.

This ordinance recognizes the existing annual dedication of 380 acre feet of potable water as the Water Entitlement, which is evidenced by Water Use Permits authorizing use within specific portions of the Del Monte Forest and a specific area of four lots immediately adjacent thereto, which portions are collectively defined as the "Benefitted Properties" in the Fiscal Sponsorship Agreement as amended. The Water Entitlement and Water Use Permits represent a portion of the potable water freed up by the implementation of the Original Project. The MPWMD Board authorized certain amendments to the definition of such "Benefitted Properties" prior to the date that this ordinance is adopted.

This ordinance authorizes PBC to separately convey, for valuable consideration, up to 175 acre feet of PBC's existing Water Entitlement solely for dedication to property or the portion thereof being used for residential purposes within the Del Monte Forest that is not owned by PBC as of the date that this ordinance is adopted. Any portion of the Water Entitlement thus conveyed may be used only on the specific property to which it is first dedicated following the conveyance, and up to the quantity of water purchased shall be put solely to Residential use. All of the proceeds from each of these separate conveyances shall be applied exclusively to the costs of the Project Expansion and the Original Project as more specifically described in Section Three of this ordinance.

This ordinance does not alter the continuing guarantees of PBC's fiscal responsibility for the Original Project. It establishes a specific method by which PBC will attempt to raise funds to

finance all Capital Costs of the Project Expansion. Funds thus raised (and any additional funds separately contributed) in excess of the amount needed for Capital Costs of the Project Expansion shall be applied as more specifically described in Section Three of this ordinance. Ordinance No. 39, which is among the body of actions and agreements supporting the issuance of MPWMD's Certificates of Participation as tax-exempt financing and defining MPWMD's obligations to the holders thereof, remains in full force and effect, with all of its terms, except to the extent its terms are amended by the terms of this ordinance.

MPWMD shall use its existing authority, including without limitation the provisions of Rule 42, MANDATORY RELEASE OF CUSTOMER INFORMATION FROM WATER DISTRIBUTION SYSTEMS, and shall adopt such additional Rules and Regulations, or execute such agreements, as are necessary to gather information concerning (1) the quantity of potable water obtained from Cal-Am on a monthly and total annual basis to serve the Benefited Properties (wherever located), and (2) the quantity of Recycled Water produced by the Project on a monthly and total annual basis to serve Recycled Water Irrigation Areas. The purpose of gathering this information is to respond to the SWRCB's request that MPWMD document that (a) the new use of potable water does not exceed the historic quantity of potable water provided by Cal-Am to the Del Monte Forest property, and (b) the quantity of Recycled Water put to beneficial use equals or exceeds the potable water use.

Section Three: Financing for the Project Expansion

A. Method of and Procedure for Financing Project Expansion

1. This ordinance shall allow PBC, on terms and conditions set forth in the following Subsections of this Section Three, to separately sell and convey up to 175 acre feet of its existing Water Entitlement solely for dedication to the Benefited Properties (as defined in this Ordinance) not owned by PBC as of the date that this ordinance is adopted.

2. Pursuant to the Recycled Water Project Supplemental Financing Agreement ("Supplemental Financing Agreement"), an agreement to be entered into between MPWMD and PBC in connection with this ordinance, PBC will use its good faith efforts, within the limitation stated in the preceding subsection, to sell such portions of its Water Entitlement as PBC in its discretion may determine to raise the funds

necessary to cover the Capital Costs of the Project Expansion. At the end of each month after the effective date of this Ordinance, PBC shall report to MPWMD, in a manner that shall not adversely impact its continuing ability to sell such portions of its Water Entitlement, on its progress in raising funds for the Supplemental Financial Commitment (as defined herein).

3. As of the date of adoption of this ordinance, the Capital Costs of the components comprising the Project Expansion (as those terms are respectively defined herein) are estimated by others at \$22 million.

4. All proceeds received by PBC from any separate sale or conveyance of a portion of PBC's Water Entitlement as described in this Subsection shall be deposited in an account requiring the signature of PBC and at least one Public Participant to release funds and shall be used to pay for, in the first instance, the Capital Costs of the Project Expansion.

5. If the expected proceeds of the commitments received by PBC for sale of portions of its Water Entitlement within eighteen months after this Ordinance becomes effective are insufficient to fund the entire Project Expansion, and no person or entity has come forward with sufficient additional funds to enable both components to proceed, the parties shall follow the procedures specified in Subsection A.8.

6. Capital Costs of the Project Expansion advanced by PBC or any other person (including any funds independently committed by MPWMD, PBC, IRWUG, CAWD, PBCSD, or any other entity as a part of the funding component of the Supplemental Financial Commitment) shall be reimbursed only after sufficient funds from the Supplemental Financial Commitment have been set aside or guaranteed to assure that the Project Expansion will be Completed.

7. Any proceeds from such sales in excess of the Capital Costs of the Project Expansion shall be used to pay the Capital Costs of the Original Project. Under no circumstances shall PBC keep any of the proceeds received from the separate sale or conveyance pursuant to this Subsection A, provided that nothing in this sentence shall be construed to affect the reimbursement, after the Project Expansion is Completed, of Capital Costs of the Project Expansion advanced by PBC or any other entity.

8. If PBC has not, within eighteen months after this Ordinance becomes effective in accordance with Section Nine hereof, given notice that all of the elements of the "Supplemental Financial Commitment," as defined herein, are present, MPWMD may hold a hearing to determine whether, and for what period of time, if any, to allow PBC to continue selling portions of its Water Entitlement. MPWMD shall give PBC, CAWD, PBCSD, and IRWUG not less than 14 days written notice for such hearing. The purpose of the hearing is to consider such evidence that may be presented (including written materials that may be included in an Administrative Record), and based thereon, to determine (1) whether there is a reasonable possibility that such efforts will generate funds sufficient to pay for the Capital Costs of the Project Expansion and (2) whether PBC has used good faith efforts to raise the Supplemental Financial Commitment.

9. Upon considering the evidence presented (including written materials that may be included in an Administrative Record), which will be the basis for its determination of whether, and for what period of time, if any, PBC may continue selling portions of its Water Entitlement, MPWMD may make a determination thereon. MPWMD shall give PBC written notice of its determination, whereupon the determination shall take effect on the 15th day following service of the notice by personal delivery or by facsimile, whereupon, PBC shall immediately comply with the determination or timely challenge the same in court.

B. Authority to Sell Portions of PBC Water Entitlement In recognition of PBC's undertaking to raise funds for, and, upon raising such funds, to irrevocably commit such funds to, the Project Expansion through the sale of portions of its Water Entitlement (in accordance with the terms and conditions specified in this ordinance and in Rule 23.5), PBC is hereby authorized, beginning 30 days following adoption of this Ordinance, to separately sell and convey to other owners of land within Del Monte Forest, for such consideration and upon such terms and conditions as PBC in its discretion may determine, such portions of its Water Entitlement as it may choose, provided that each such conveyance shall conform to the limitations of Subsection C, and that the use of each portion of the PBC Water Entitlement thus conveyed shall comply with the limitations set forth in Subsection D.

C. Procedures for Separate Sale and Conveyance

1. No such conveyance shall be effective unless and until the writings comprising the Supplemental Financial Commitment (as defined herein) have been received by MPWMD; and
2. Each portion of the PBC Water Entitlement thus conveyed:
 - a. shall be dedicated solely to property within the Del Monte Forest that is not owned by PBC as of the date that that this ordinance is adopted;
 - b. shall be put solely to Residential use (as defined in Rule 11); and
 - c. shall be offered on the same terms and conditions to persons on the Monterey County waiting list for approved residential development projects within the Del Monte Forest which are awaiting water availability .
3. As of the date that the writings comprising the Supplemental Financial Commitment as defined herein are received by MPWMD, each recipient of a portion of PBC's Water Entitlement sold and conveyed pursuant to Subsection C shall be entitled to issuance by the General Manager of a Water Use Permit. The Water Use Permit shall authorize uses only through a "Residential connection" (as defined in Rule 11), up to the amount of the Water Entitlement separately conveyed as is documented and authenticated in the conveyance documentation presented to the General Manager.
4. All Water Use Permits issued pursuant to this Subsection to evidence the portions of the Water Entitlement separately conveyed by PBC pursuant to Subsection C of this Section Three shall provide that rights memorialized thereby shall be subject to modification after year 2075 as provided in this ordinance and in Ordinance No. 39, and shall further provide that such rights shall not be Revoked (as defined in Rule 11) or Terminated as defined herein with respect to the entire Water Entitlement so conveyed except as provided in Subsection D of this Section Three.
5. Each of the restrictions of use set forth in Subsection D of Section Three shall be set forth on the face of the Water Use Permit, and shall bind each owner of the Benefited Property to which the conveyed Water Entitlement is assigned.
6. The General Manager shall simultaneously make a record of the quantity of the Water Entitlement thus conveyed and a commensurate reduction in the aggregate amounts of the Water Entitlement thereafter held by PBC. The Water Use Permit shall

provide that MPWMD shall have such access as may be required to enable it to account for the use of water on the Benefited Property.

D. Restrictions on Use of Portion of Water Entitlement Separately Sold and Conveyed

1. Any portion of the Water Entitlement of PBC separately conveyed pursuant to Subsection C of this Section Three may be used only on the specific property to which it is first dedicated following the conveyance, and the water shall be put solely to Residential use (as defined in Rule 11).

2. In addition, the use of water acquired pursuant to Subsection C of this Section Three shall not exceed the quantity set forth in the Water Use Permit issued pursuant to Subsection C of this Section Three and shall be measured in accordance with the water use factors specified at the time of connection in the MPWMD Rules, as amended from time to time. In order to facilitate enforcement of this limitation, MPWMD shall use its existing authority, including without limitation the provisions of Rule 42, MANDATORY RELEASE OF CUSTOMER INFORMATION FROM WATER DISTRIBUTION SYSTEMS, and shall adopt such additional Rules and Regulations, or execute such agreements, as are necessary to gather information concerning the quantity of potable water obtained from Cal-Am on a monthly and total annual basis to serve the Benefited Properties.

3. The use of water on each of the properties to which a portion of the Water Entitlement is dedicated (after conveyance by PBC pursuant to Subsection A of this Section Three) shall be measured in accordance with the water use factors specified at the time of connection in the MPWMD Rules, as amended from time to time, and shall at all times remain subject to the limitations and restrictions referenced in this ordinance and Rule 23.5.

E. Use of Water Entitlement by PBC PBC may commence or continue to use the quantity of PBC's Water Entitlement that is not sold and conveyed by PBC pursuant to Subsection A of this Section on any or all Benefited Properties owned by PBC as of the time that this ordinance is adopted, as provided in the Fiscal Sponsorship Agreement, for any lawful use as determined by the appropriate jurisdiction with land use authority thereover. In addition, PBC

may sell and convey a parcel of land that it owns together with a specified portion of PBC's remaining Water Entitlement without being required to apply any consideration received therefor to the Project.

Section Four: Amendment of Rule 23.5

Monterey Peninsula Water Management District Rule 23.5 shall be amended by adding the portion set forth in *italicized typeface* and by deleting all text shown in ~~strikeout typeface~~. In all other respects, the text of Monterey Peninsula Water Management District Rule 23.5 shall remain unchanged and shall be republished by this ordinance.

Rule 23.5 PERMITS FOR WATER FROM THE CAL-AM WATER DISTRIBUTION SYSTEM DEDICATED FOR USE IN CONNECTION WITH THE PLAN TO FINANCE THE WASTEWATER RECLAMATION RECYCLED WATER PROJECT

A. ISSUANCE OF WATER USE PERMITS. ~~Upon~~*The Board having selected* ~~of~~ ~~all the~~ Fiscal Sponsor/Sponsors pursuant to Part II of Ordinance No. 39 and *based upon* the irrevocable commitment by those ~~s~~Sponsors to underwrite, be responsible for, assure and guarantee payment of the Financial Commitment (Capital Costs and Net Operating Deficiencies and Ancillary Project Costs of the ~~Reclamation-Original~~ Project recorded by the agreements required by Part VII of ~~this~~ Ordinance No. 39), *MPWMD has granted the Water Entitlement and the General Manager shall* ~~has~~ issued Water Use Permits to ~~the Fiscal Sponsor/Sponsors~~ *Pebble Beach Company ("PBC"), J. Lohr Properties, Inc. ("Lohr"), and the Hester Hyde Griffin Trust ("Griffin")* authorizing the expansion and extension of the Cal-Am water distribution system to provide water service and connections for the benefit of the properties identified in the application(s) ~~of the Fiscal Sponsor/Sponsors~~ *Fiscal Sponsorship Agreement* (such properties hereinafter ~~being~~ called the "Benefitted Properties" *described in the respective Exhibits "A" theretounder as amended*). *By virtue of the Water Entitlement,* ~~Each~~ Water Use Permit shall ~~has~~ granted an irrevocable vested property interest upon one or more Benefitted ~~Parcels~~ *Properties* for the use and benefit of a specified quantity of potable water per year (in acre feet) produced by the ~~Cal-Am~~ water distribution system *owned and operated by the California-American Water Company ("Cal-Am")*.

Water Use Permits shall be subject only to the following limitations:

(1) ~~The~~ permit shall not limit the power of the *Monterey Peninsula Water Management District ("MPWMD")* to curtail water use in the event of any ~~water~~ emergency *caused by drought, or other threatened or existing water shortage,* as defined in Section 332 of the Monterey Peninsula Water Management Act, *including without limitation the power of MPWMD to terminate water service as a consequence of a violation of water use restrictions;*

(2) ~~The~~ permit shall not relieve or reduce any obligation of the recipient of water to pay customary fees, connection charges, user fees, surcharges, taxes, utility taxes, and/or any other customary monetary obligation which may be imposed by the California Public Utilities Commission, Cal-Am, ~~MPWMD District~~, or other Public Participants upon water users of the same class within the ~~California-American Water Company~~ service area, including but not limited to fees and charges due and payable to MPWMD by reason of Rule 24 of MPWMD's Rules and Regulation, *nor shall such permit limit the authority of Cal-Am or MPWMD to terminate water use for non-payment of such fees and charges;*

(3) ~~The~~ permit shall enable present use of the Water Entitlement *by PBC* only upon ~~its~~ the commencement of operation of the Reclamation Project and upon the continuing financial assurance or guarantee ~~by the Fiscal Sponsor/Sponsor(s)~~ relating to the payment of Net Operating Deficiencies for the ~~Reclamation Project~~; *and*

(4) ~~Notwithstanding any other provision of this Rule Ordinance:~~

(a) the Water Entitlement allocated to the Benefited Properties as a whole shall not exceed 380 AF,

(b) the water usage under the Water Entitlement on any Benefited Property shall not exceed the amount of the Water Entitlement allocated to such Benefited Property, measured in accordance with the water use factors specified at the time of connection in the MPWMD Rules, as amended from time to time, and

(c) for purposes of collecting connection charges and fees, the projected water usage of the Benefited Properties shall be calculated by MPWMD in the manner set forth in Rule 24.

(5) *Further, notwithstanding any other provision of this Rule, once a new water connection is established pursuant to ~~through~~ a Water Use Permit and use of all or a portion of a Water Entitlement,*

(a) no user of water through such connection shall be entitled to preferential access to water over any other water user of the Cal Am water distribution system; and

(b) the fixtures on the Benefited Property served by that connection shall be subject to verification of water use capacity in the manner specified in the MPWMD Rules, as amended from time to time; and

(c) the use of water on the Benefited Property served by such connection shall be accounted for by MPWMD in the manner specified at the time of connection in the MPWMD Rules, as amended from time to time; and

(d) the restrictions of use set forth above shall be enforced as determined by MPWMD to be necessary.

(6) The revocation and termination of any Water Use Permit shall not diminish or otherwise adversely affect present actual use of water by reason of a prior expansion or extension of the Cal-Am water distribution system through any connection previously made pursuant to such Water Use Permit, *except that actual use of water may be reduced pursuant to the provisions of subparagraphs A(1) through A(5).*

(7) Permits issued pursuant to this Rule shall represent a vested property interest upon issuance and shall not be subject to revocation or cancellation except as expressly set forth in subparagraph (D) below.

(8) The Water Entitlement granted by each Water Use Permit shall not be subject to reallocation pursuant to ~~District~~-MPWMD Rule 30, nor shall it be terminated or diminished by reason of any water emergency, water moratorium or other curtailment on the setting of meters for the California-American Water System, nor shall it otherwise be subject to diminishment or revocation, except in the event that a Water Use Permit is ~~revoked~~ or cancelled or as otherwise provided by subparagraph (D) below.

B. WATER USE PERMIT PROVISIONS. Each Water Use Permit shall be issued by the General Manager with respect to a single Benefitted Property and shall identify, with respect to the Benefitted Property:

(1) the nature (industrial/commercial/residential) and location of the water use to be applied to each Benefitted Property, and the consistency of such water use with existing land use and zoning plans;

(2) the number and nature of connections projected for each Benefitted Property; and

(3) the amount of the Water Entitlement dedicated to, conveyed with, or separately conveyed to, ~~projected water use required by each connection proposed upon the~~ Benefitted Property.

C. AMENDMENT OF WATER USE PERMITS.

(1) ~~The Each Fiscal Sponsor-Owner~~ of any Benefitted Property, shall, upon request, be entitled to an amendment to any Water Use Permit to reduce, or increase (up to the amount of the Water Entitlement specified in the Water Use Permit pursuant to subparagraph B(3) of this Rule), or change the number and type of connections and water use with respect to that Benefitted Property. In addition, the Owner of any Benefitted Property not described in subparagraph C(2) or C(3) below shall, upon request, be entitled to an amendment to any Water Use Permit to reduce, or increase, or change the number and type of connections and water use with respect to any Benefitted Property owned by such Fiscal Sponsor-Owner, provided that in no event shall the aggregate amount of estimated annual water usage for the Benefitted Properties owned by that Owner of that Fiscal Sponsor/Sponsors exceed the aggregate Water Entitlement allocated to the Benefitted Properties of that Fiscal Sponsor-Owner, and provided further that the reallocation of connections shall be allowed only among those locations identified in Exhibit A to the Fiscal Sponsorship Agreement (as such Exhibit has been amended after execution to expand the Benefitted Properties) application.

(2) As an integral part of the conveyance of title to one or more Benefitted Properties, Water Use Permits shall ~~may be conveyed transferred~~ and assigned to the successors-in-interest to the Benefitted Properties to which the pertinent portion of the

Water Entitlement is dedicated.

(3) Owners who have received a Water Use Permit from MPWMD for the portion of the Water Entitlement acquired by separate sale and conveyance from PBC pursuant to Section Three of Ordinance No. 109 shall be entitled to use up to the quantity of the Water Entitlement evidenced therein only after the writings comprising the Supplemental Financial Commitment (as defined herein) have been received by MPWMD and then only on the Benefited Property to which it applies. Such Owners shall not have the right to further sell or convey the Water Use Permit or the corresponding portion of the Water Entitlement for any use other than Residential use or on any other Benefited Property.

D. REVOCATION AND TERMINATION OR MODIFICATION OF WATER USE PERMITS.

Each Water Use Permit held by the Fiscal Sponsor shall provide that it shall be revoked and terminated in the event that the Fiscal Sponsor shall default in any material manner upon its obligation, assurance, and guarantee of the Financial Commitment for the Reclamation Project, provided that nothing herein shall preclude PBC or any other subsequent Fiscal Sponsor from disputing in good faith any claim of default made by the ~~Water Management District MPWMD~~ nor shall the ~~Water Management District MPWMD~~ terminate or revoke any Water Use Permit unless the ~~PBC or any subsequent~~ Fiscal Sponsor shall have been given notice and a reasonable opportunity to cure any such default so long as such opportunity to cure shall not result in any payment default to the ~~any bondholders of the Certificates of Participation.~~

All Water Use Permits issued to evidence the Water Entitlement conveyed by PBC pursuant to Subsections C and D of Section Three of Ordinance No. 109 shall not be Revoked (as defined in Rule 11) or Terminated as defined herein with respect to the entire Water Entitlement so conveyed except as set forth in the following sentences.

~~In addition, n~~Notwithstanding the preceding sentences of this Subsection D ~~any other provision of this Ordinance,~~ the actual use on each of the properties to which a portion of the Water Entitlement is dedicated (after conveyance by PBC pursuant to Subsections C and D of Section Three of Ordinance No. 109) shall at all times remain subject to the limitations and restrictions referenced in Subsections A through C of this Rule 23.5, which shall be enforced in the manner determined by MPWMD to be necessary. In order to facilitate enforcement of this limitation, MPWMD shall account for the use of water on the Benefited Property in the manner specified at the time of connection in the MPWMD Rules, as amended from time to time .

Moreover, each Water Use Permit which on or after January 1, 2075, embodies an annual Water Entitlement in excess of requirements for planned land uses on a Benefitted Property or which purports to authorize usage in excess of the constitutional limitation to reasonable and beneficial use shall be subject to modification, revocation, or ~~and~~ termination in the sole discretion of the ~~District MPWMD~~, such that the water usage authorized thereby shall not exceed such requirements and limitations.

Prior to any ~~termination and revocation or~~ modification, ~~termination, or revocation~~ pursuant to this subparagraph D, the holder of the Water Use Permit, ~~Fiscal Sponsor,~~ shall be

entitled to notice and a hearing, and any termination, revocation, or modification shall be subject to appeal to the Board pursuant to Rule 70 of the ~~District-MPWMD~~ Rules and Regulations.

The revocation, ~~and termination~~, or modification of any Water Use Permit shall not diminish or otherwise adversely affect present actual use of water by reason of prior expansion or extension of the Cal-Am water distribution system through any connection previously made pursuant to such Water Use Permit, *provided that each Water Use Permit holder shall be subject to such laws, ordinances, and regulations as are generally applicable to all similarly situated users (Residential users within the Cal-Am System with lots classified by MPWMD as the same size) actually using water from the Cal-Am water distribution system, and nothing herein is intended to or shall affect the ability to curtail or eliminate the actual use of water through any connection previously made pursuant to a Water Use Permit to the extent such curtailment or elimination is authorized by such generally applicable laws, ordinances, or regulations applied in a non-discriminatory fashion to all similarly situated users in the Cal-Am System (Residential users with lots classified by MPWMD as the same size).*

For example, persons using water from the Cal-Am water distribution system are required to reduce their water usage in the various stages in MPWMD's Expanded Water Conservation and Standby Rationing Plan, and may be penalized or their water service may be terminated for failing to reduce water usage as required. Similarly, such persons must pay the rates and charges imposed for such water service, or their water service may be terminated.

E. CAL-AM SYSTEM EXPANSION/EXTENSION PURSUANT TO WATER USE PERMITS.

~~So long as the Reclamation Project has commenced operation so long as all assurances or guarantees required for both payment of Capital Costs and payment of Net Operating Deficiencies for the Reclamation Project continue to be met, each~~ Water Use Permit shall entitle the owner of a Benefitted Property to *potable water* service to be provided by the Cal-Am water distribution system for such Benefitted Properties, including the installation of water meters and mains as necessary *notwithstanding the existence of a moratorium or a temporary delay on new connections*, upon *payment of the fees required by subparagraph E.2. and presentation to MPWMD the District by the Fiscal Sponsor-Owner of the applicable Benefitted Property of the following:*

(1.)

(a) A statement by the ~~Fiscal Sponsor-Owner~~ setting forth the annual capacity of water use that the ~~Fiscal Sponsor-Owner~~ *intends to use* through such expansion/extension of the Cal-Am water distribution system, and the nature of the uses to which such water is intended to be applied; and

(b) a valid municipal or county building permit which will allow construction upon the Benefitted Property; ~~and~~

(c) a complete set of architectural contract drawings; or

(d) other documentation sufficient for ~~MPWMD the District~~ to determine quantity and the capacity for annual water use of the Benefitted Property *in the manner set forth at the time of connection in the MPWMD Rules, as amended from time to time*, and the number and type of each requested connection.

~~(2.)~~ The payment of any customary fees and connection charges required by both Cal-Am and ~~the District~~ ~~MPWMD~~ of water users within the Cal-Am service area, calculated upon the basis of the annual water usage capacity for the Benefitted Property *determined as set forth in the preceding subsection E.1(d)* ~~set forth in the Fiscal Sponsor's statement~~, including but not limited to fees and charges due by reason of Rule 24 of ~~the District's~~ ~~MPWMD's~~ Rules and Regulations.

Upon the filing of the information and payment of the fees required above, the General Manager shall ~~issue~~ ~~make a notation on the Water Use Permit pursuant to those provisions of Rule 23 authorizing the expansion/extension of the Cal-Am water distribution system consistent with this Rule 23.5, which Permit shall indicate~~ the location, *maximum usage measured as capacity*, and nature of each connection requiring a present expansion/extension of the Cal-Am water distribution system. *Customary fees and connection charges* ~~Estimated usage~~ shall be calculated based upon the water use capacity for proposed or planned development upon Benefitted Properties *and calculated in the manner described in Rule 24*. The water use represented by such expansions/extensions of the Cal-Am water distribution system, shall not exceed the Water Entitlement evidenced by such Water Use Permit. In the event that an *Owner of any Benefitted Property* ~~Fiscal Sponsor~~ requests an expansion/extension of the Cal-Am water distribution system with respect to less than all of the Water Entitlement evidenced by such Water Use Permit, the General Manager shall make a *record of the respective amounts deducted from and remaining under the pertinent notation on such Water Use Permit indicating the remaining Water Entitlement (as evidenced in the Water Use Permit)*.

The *Owner of any Benefitted Property to which the Owner has previously applied a portion of the Water Entitlement through prior expansions/extensions of the Cal-Am water distribution system* ~~Fiscal Sponsor~~ shall be entitled to increase the annual water use ~~for any on such Benefitted Property to which the Fiscal Sponsor has previously applied a portion of the Water Entitlement through prior expansions/extensions of the Cal-Am water distribution system~~ upon presentation of the information and payment of the fees set forth in this subparagraph (E), provided that *such increase does not cause the any such increases in water use for on the Benefitted Property (or, in the case of PBC, PBC's Benefitted Properties) to shall not exceed in the aggregate the total Water Entitlement of all Benefitted Properties owned by such Owner, or the total Water Entitlement of the Benefitted Properties as a whole.*

Cal-Am shall be authorized to execute a contract with the Fiscal Sponsor to enable the provision of water service *pursuant to subsections C and D of Section Three of Ordinance No. 109* consistent with the Water Entitlement evidenced by the Water Use Permit issued under this provision. Such agreement with Cal-Am shall at the Fiscal Sponsor's option be a condition precedent to the ~~providing of financing pursuant to Section Three of Ordinance No. 109~~ ~~Fiscal Commitment by the Fiscal Sponsor that is to pay for the Capital Costs of the Project Expansion~~. The actions required to be taken by the General Manager pursuant to the

foregoing provisions of this paragraph E shall be ministerial, non-discretionary acts which shall not be affected by any water moratorium, water emergency, allocation decision or other curtailment on the setting of new water meters for the Cal-Am water distribution system and shall be enforceable by mandamus.

Nothing in the foregoing is intended to or shall affect the ability of MPWMD to curtail or eliminate the actual use of water through any connection previously made pursuant to a Water Use Permit to the extent that such curtailment or elimination is authorized by other laws, ordinances, or regulations as are generally applicable to all similarly situated users (Residential users within the Cal-Am System with lots classified by MPWMD as the same size) actually using water from the Cal-Am water distribution system, nor is it intended to provide or imply that any Water Use Permit holder shall not be subject to such generally applicable laws, ordinances, and regulations. For example, persons using water from the Cal-Am water distribution system are required to reduce their water usage in the various stages in MPWMD's Expanded Water Conservation and Standby Rationing Plan, and may be penalized or their water service may be terminated for failing to reduce water usage as required. Similarly, such persons must pay the rates and charges imposed for such water service, or their water service may be terminated.

F. PROCEDURE IN CASE OF INTERRUPTION OF RECYCLED WATER DELIVERIES

1. The provisions of this subparagraph F shall be applicable only after the Project Expansion is Completed. After the Project Expansion is Completed, if there is an Interruption in Recycled Water deliveries to any Recycled Water Irrigation Area, the temporary use of potable water for irrigating each such Recycled Water Irrigation Area is authorized in the manner described in this Subsection F. Following written notice to MPWMD from an owner of the affected area, CAWD, PBCSD and/or Cal-Am, CAWD, PBCSD and/or Cal-Am are authorized to turn on the connection by which potable water enters the distribution system serving the Recycled Water Irrigation Areas. Reports of the quantities of potable water introduced into the Project through this connection on a daily basis shall be submitted to MPWMD each week throughout the Interruption.

2. Under normal circumstances, potable water shall not be used for irrigation of a Recycled Water Irrigation Area for any longer than the period of time reasonably required to promptly and diligently complete repair or replacement or other activities necessary to restore Recycled Water service, provided that potable water shall be made available for irrigating tees and greens during an Interruption without any limitation on the duration.

3. If potable water has been used for irrigation of a Recycled Water Irrigation Area for 15 days, MPWMD may thereafter give notice of, and hold, a hearing (a) if it appears that the repair or replacement or other activities necessary to restore Recycled Water Service are not being completed promptly or diligently, or (b) upon the request of any interested party, who asserts that due to unique or unusual circumstances there may be a need to use potable water for irrigation of a Recycled Water Irrigation Area for a period

longer than the period of time reasonably required to promptly and diligently complete repair or replacement or other activities necessary to restore Recycled Water service. The purpose of the hearing is to determine the period of time during which, and what quantities of, potable water shall continue to be supplied for irrigation of the affected Recycled Water Irrigation Area(s).

4. MPWMD shall give CAWD, PBCSD, Cal-Am, and the owners of each affected Recycled Water Irrigation Area(s) not less than 30 days advance written notice for any such hearing, which notice shall set forth the basis of the hearing (as described in the preceding sentence).

5. Upon considering the evidence presented (including written materials that may be included in an Administrative Record), MPWMD may determine the period of time during which, and what quantities of, potable water shall continue to be supplied for irrigation of the affected Recycled Water Irrigation Area(s). MPWMD shall give CAWD, PBCSD, Cal-Am, and the owners of the affected Recycled Water Irrigation Area(s) written notice of such determination, and the determination shall be effective on the 15th day following service of the notice by personal delivery or by facsimile, whereupon, each party shall immediately comply with the determination or timely challenge the same in court.

6. If MPWMD has adopted an ordinance in response to any emergency caused by drought, or other threatened or existing water shortage pursuant to section 332 of the Monterey Peninsula Water Management Law, said ordinance shall prevail over contrary provisions of this Subsection F.

7. If (1) an emergency or major disaster is declared by the President of the United States, or (2) a "state of war emergency," "state of emergency," or "local emergency," as those terms are respectively defined in Government Code section 8558, has been duly proclaimed pursuant to the California Emergency Services Act, with respect to all or any portion of the territory of MPWMD, the provisions of this Subsection F shall yield as necessary to respond to the conditions giving rise to the declaration or proclamation.

G. DEFINITIONS.

For the purpose of this Ordinance No. 109 and Rule 23.5, the following words shall have the meanings set forth below. Other words which are defined in Rule 11 to the Rules and Regulations, when used in Rule 23.5 or this ordinance shall have the meanings set forth therein, unless the context otherwise indicates.

"Actual use of water" means the quantity of water that has passed through the water meter or meters installed to measure it.

"Ancillary Project Costs" means net revenues (gross revenues less allocable operation and maintenance costs and administrative and general costs as such terms are defined in accord with generally accepted utility practices), with respect to the potable water, subject, from time to time, to the Water Entitlement, which Cal-Am shall not receive by reason of operation of the Reclamation Project. Ancillary Costs shall not include any return on assets of Cal-Am which

have been removed from the water distribution system rate base by reason of the Reclamation Project. Ancillary Costs shall be reduced over time by net revenues received by Cal-Am by reason of sales of Cal-Am potable water (with respect to the Benefited Properties) following the first date of Reclamation Project operation.

"Benefitted Properties" means those properties described on Exhibit "A" hereto within the Cal-Am service area which have been identified within the application of the selected Fiscal Sponsor/Sponsors and upon which a portion of the Water Entitlement may be utilized. For any public agency Fiscal Sponsor, the term "Benefitted Properties" shall be defined as those properties owned entirely by the public agency and dedicated for public use. All Benefitted Properties are located in the unincorporated portion of the Del Monte Forest (the area shown on Exhibit "B") except as otherwise noted in Exhibit "A."

"Cal-Am" means the California American Water Company, a California corporation, its successors and assigns.

"Capital Costs" as applied to the Reclamation Project or any portion thereof means all or any part of:

(a) the cost of acquisition of all lands, structures, real or personal property rights, rights-of-way, franchises, easements, and interests acquired or used for, the Reclamation Project, inclusive of fees and commissions for acquisition;

(b) the cost of construction related to of the Reclamation Project, including but not without limitation, to demolition, repair, modification, replacement or renovation of existing structures, facilities, fixtures or equipment essential to the construction and operation of the Project; cost of improvements and materials; direct and indirect Public Participation construction and administration expenses of each of the Public Participants properly allocable to the Reclamation Project in accordance with generally accepted accounting principles; costs of painting, decorating, furnishing and landscaping; contractor and subcontractor profit; and costs related, by reason of the Reclamation Project, to plumbing, mains, tanks, or pipes which are modified, repaired, replaced, or renovated, whether owned by Public Participants or others.

(c) the cost of demolishing or removing any buildings, fixtures, equipment, or structures on land so acquired, including, without limitation, the cost of acquiring any lands to which such buildings or structures may be moved;

(d) the cost of all new machinery, piping, equipment and furnishings, including but not limited to and the cost lessor of (i) the fair market value, or (ii) depreciated value for purposes of the applicable rate base, of machinery, piping, equipment and furnishings made obsolete or unusable to Cal-Am; or any of the Public Participants, or others by reason of the Reclamation Project to the extent not replaced by the Project;

(e) costs of selling and issuing the Certificates of Participation, including, without limitation, the underwriter's discount Financing charges;

(f) Interest on any funds advanced to permit payment of any of the Capital Costs prior to, during, and for a reasonable period after completion of the acquisition

and construction of the Reclamation Project as determined by PBC and MPWMD the District, including, without limitation, capitalized interest on the Certificates of Participation;

(g) ~~Provisions for working capital;~~(h) ~~the Operating Reserve, as defined in the Fiscal Sponsorship Agreement for routine or extraordinary repairs and replacements necessary to the Reclamation Project;~~

(ih) the cost of architectural, engineering, planning, environmental analysis, financial, accounting, auditing and legal services, plans, specifications, estimates, administrative expenses, permits, fees, adverse claims, personnel and overhead costs (both direct and indirect, to the extent properly allocable to the Reclamation Project in accordance with generally accepted accounting principles), and other expenses necessary or incident to determining the feasibility of construction of any portion of the Reclamation Project or incident to the planning, construction, acquisition, or financing of any portion of the Project, subject to independent audit and review pursuant to the Supplemental Construction and Operation Agreement, including, without limitation:

1. ~~P~~payment during the construction period of the premiums for all title and other insurance, bonds, or undertakings required to be ~~taken out~~ obtained and maintained with respect to any part of the Reclamation Project, to the extent such amounts are not paid by any contractor who constructs or installs any portion of the Reclamation Project;
2. ~~P~~ayment of the taxes, assessments and other fees or charges, if any, that may become payable during the construction period with respect to any portion of the Reclamation Project, or reimbursements thereof; and
3. ~~P~~ayment of expenses incurred in seeking to enforce any remedy against any contractor or subcontractor in respect of any default under a contract relating to the acquisition, construction or installation of any portion of the Reclamation Project.

"Capital Costs of the Project Expansion" means costs falling within the preceding definition of Capital Costs that apply to the Project Expansion, and without limitation specifically includes payment of expenses incurred concerning the Project Expansion, the need therefor, and related matters beginning on January 1, 1995, and continuing through the drafting, negotiation, and execution of any and all agreements necessary or desirable to implement the design, construction, operation, and maintenance of the Project Expansion and any modifications thereof or thereto.

"CAWD" means the Carmel Area Wastewater District (formerly known as the Carmel Sanitary District), a public agency.

"CAWD/PBCSD" means both the Carmel Area Wastewater District and the Pebble Beach Community Services District, in reference to the Project.

"Certificates of Participation" means the Certificates of Participation issued by MPWMD in 1992 in the amount of \$33.9 million to finance the Capital Costs of the Original Project.

"Completed" with respect to the Project Expansion shall mean that (1) all required permits or other approvals have been obtained, and (2) all construction activities for the advanced treatment components (being added to the tertiary treatment plant facilities of the Original Project), Forest Lake Reservoir, and all treatment, and distribution facilities associated therewith, have been completed and tested in accordance with their respective approved plans, permits and other approvals, and (3) Forest Lake Reservoir has been filled to capacity with "Recycled Water" suitable for irrigation of all portions of the Recycled Water Irrigation Areas without the addition of any potable water thereto and otherwise meeting all regulatory and health standards for such usage, and (4) all portions of the distribution system are capable of delivering such Recycled Water to the Recycled Water Irrigation Areas. The Project Expansion shall be deemed Completed only if and when each of the events described in the preceding sentence have occurred.

"Construction and Operation Agreement" means the Wastewater Reclamation Project Construction and Operation Agreement among the Monterey Peninsula Water Management District, Carmel Area Wastewater District, the Pebble Beach Community Services District, and the Pebble Beach Company, dated as of November 1, 1990, as it may be amended from time to time.

"Del Monte Forest" means the area of unincorporated Monterey County described and/or depicted on Exhibit "B"

"Financial Commitment" means the commitment of PBC, as the Fiscal Sponsor, or any subsequent Fiscal Sponsors, to assume and guarantee payment of (1) the Capital Costs of the Reclamation-Original Project (including the payment of the principal of and interest on the Certificates of Participation or any bonds or other obligations issued by any Public Participant to finance such costs), and (2) the Net Operating Deficiencies of the Reclamation-Project for the entire period ending twenty years following the estimated completion date of the project until the Certificates of Participation (and any bonds or other obligations issued by any Public Participant to finance such costs) have been paid in full (or for any shorter periods as permitted by the District-MPWMD), and (3) payment of all Ancillary Project Costs.

"Financing Implementation Agreement" means the Financing Implementation Agreement Relating to Wastewater Reclamation Project, dated as of November 1, 1992, by and between MPWMD and PBC, as it may be amended from time to time.

"Fiscal Sponsor or Fiscal Sponsors" means the PBC and any person or persons (including partnerships, corporations, municipal corporations, or other public entities) selected to act that may succeed PBC and assume, as the Fiscal Sponsor/Sponsors, all of PBC's obligations pursuant to Part II of Ordinance No. 39, Ordinance No. 109, the Fiscal Sponsorship Agreement, and any amendments thereof, which person or persons shall will be obligated, and liable for, and capable of paying the Capital Costs and Net Operating Deficiencies of the Reclamation-Project.

"Fiscal Sponsorship Agreement" means the Wastewater Reclamation Project Fiscal Sponsorship Agreement between the Monterey Peninsula Water Management District and Pebble Beach Company, dated as of October 3, 1989, as it may be amended from time to time.

"Franchise-Freed-Up Water" means potable water which has been freed for new use by

reason of ~~subpotable-Recycled W~~water deliveries from the ~~Reclamation-Project~~. "*Freed-Up Water*" has the same meaning as "*Franchise Water*" in Ordinance No. 39.

"*General Manager*" means the General Manager of MPWMD.

"*Interruption,*" means an interruption for longer than 12 hours in the supply of Recycled Water to a Recycled Water Irrigation Area.

"*MPWMD*" means the Monterey Peninsula Water Management District, a public agency.

"*Net Operating Deficiency*" as applied to the ~~Reclamation-Project~~ means, for any fiscal year or portion thereof, the difference between the Operating Revenues and the Operation and Maintenance Expenses for such period.

"*Operation and Maintenance Expenses*" as applied to the ~~Reclamation-Project~~ means all expenses and costs of management, operation, maintenance and repair of the ~~Reclamation Project~~, including, *without limitation*, payments to be made by the Public Participants under agreements with Cal-Am for the purchase of subpotable water, ~~debt-service payments on bonds or other obligations issued to finance the cost of the Reclamation Project~~; and all incidental costs, fees and expenses incurred for such purpose properly chargeable to the ~~Reclamation Project in accordance with generally accepted accounting principles, including an allowance for reasonable depreciation, amortization, and obsolescence which is determined pursuant to generally accepted utility practices (subject to limitations set forth in the agreements applicable to the Project including but not limited to the Construction and Operation Agreement and the Fiscal Sponsorship Agreement), charges or reserves therefore assuming straight line depreciation upon a useful life assumed to be thirty (30) years, amortization of intangibles and other bookkeeping entries of a similar nature further provided, however, that Operation and Maintenance Expenses shall include all administrative expenses of MPWMD and PBC incurred in connection with, and properly allocable as an expense relating to the Project and the Certificates, and further provided however that Operation and Maintenance Expenses shall include an amount equal to any reduction in real property taxes allocated to MPWMD caused by a change in State law which results in a reduction of such tax allocation based on the collection of the Operating Revenues from the sale of the Recycled Water.~~

"*Operating and Maintenance Reserve Fund,*" also called "*O&M Reserve Fund,*" means a reserve maintained and held, pursuant to the Water Purchase Agreement and the Financing Implementation Agreement, separate and apart from other funds for the purpose of paying for Operations and Maintenance Expenses as they become due and payable to the extent Operating Revenues are insufficient to provide for such payments, providing working capital, and paying for routine and extraordinary repairs and replacements.

"*O&M Reserve Requirement*" means the amount calculated on or before July 1 of each year by the Management Committee to be equal to one quarter (1/4) of the projected amount of Operation and Maintenance Expenses for the immediately succeeding fiscal year as such amount may be revised upward or downward during the course of such fiscal year.

"*Operating Revenues*" as applied to the ~~Reclamation-Project~~ means all income, rents, rates, fees, charges and other moneys derived by the Public Participants from the ownership or

operation of the Reclamation Project, including, without limiting the generality of the foregoing: (i) all income, rents, rates, fees, charges or other moneys derived from the sale, furnishing and supplying of the reclaimed, subpotablewater (or from potable water supplied in lieu thereof; (ii) ~~Interest earnings on all revenues mentioned in (i) above, and on the reserve fund or account relating to the Reclamation Project, and~~ (iii) insurance and condemnation proceeds resulting from damage to or destruction of the Reclamation Project facilities, or from the condemnation of any of such facilities; and (iii) interest earned on all revenues mentioned in (i) and (ii) above or on any fund or account relating to the Project under the Trust Agreement (excluding any amounts required to be rebated to the United States pursuant to Section 148 of the Internal Revenue Code) ~~the Reclamation Project~~; provided, that ~~the such~~ term "Operating Revenues" shall not include customers' deposits or any other deposits subject to refund until such deposits have become the property of one of the Public Participants or the water supply surcharge retained by MPWMD in connection with the sale of Recycled Water in accordance with the Financing Implementation Agreement.

"Original Project" means and consists of (1) a tertiary treatment facility at the present CAWD wastewater treatment plant site, designed to produce at least 800 acre feet per year of disinfected recycled water, (2) a distribution system which is capable of distributing the recycled water from the facility to a point of distribution in the Del Monte Forest for further distribution to the Recycled Water Irrigation Areas, and (3) recycled water irrigation systems on each of the Recycled Water Irrigation Areas, all of which were completed and became operational in 1994.

"Owner" means the holder (of record) of fee title to any Benefited Property.

"PBCSD" means the Pebble Beach Community Services District, a public agency.

"Project" or "Reclamation Project" means the ~~CSD/PBCSD wastewater treatment plant (including lands, facilities, equipment, furniture and fixtures)~~ Original Project and the Project Expansion.

"Project Expansion" means and consists of components intended to improve the Original Project, principally including (but not limited to) (a) the addition of advanced treatment components to the treatment facilities of the Original Project, and (b) the addition of storage, treatment, and distribution facilities at or associated with the Forest Lake Reservoir located within the Del Monte Forest.

"Public Participant" means any one or more of the following: the Monterey Peninsula Water Management District, the Carmel Area Wastewater District, formerly the Carmel Sanitary District, the Pebble Beach Community Services District, or any successor public agency including but not limited to any joint powers agency formed by one or more of the above agencies.

The meaning of the term "Recycled Water" depends upon whether or not the Project Expansion is Completed:

(a) Before the Project Expansion is Completed, "Recycled Water" shall mean water originating from the tertiary treatment facilities of the CAWD wastewater treatment plant.

(b) After the Project Expansion is Completed, "Recycled Water" shall refer to water originating from said tertiary treatment facilities and thereafter receiving further treatment so as to be suitable for irrigation of the Recycled Water Irrigation Areas without the addition of any potable water thereto (except during an Interruption as defined herein) and otherwise meeting all regulatory and health standards for such usage. Recycled Water meeting water quality standards agreed upon by the owners of the Recycled Water Irrigation Areas and CAWD/PBCSD shall be deemed "suitable for irrigation of the Recycled Water Irrigation Areas." "Recycled Water" has the same meaning as "Reclaimed Water."

"Recycled Water Irrigation Areas" means the golf courses and other vegetated areas located within the Del Monte Forest that are currently being irrigated with Recycled Water supplied by the Project or such golf courses and other vegetated areas wherever located that in the future may be irrigated with Recycled Water supplied by the Project.

"State Water Resources Control Board" and "SWRCB" each mean the state agency created pursuant to Water Code sections 174 and 175 which exercises the adjudicatory and regulatory functions of the State of California in the field of water resources.

"Supplemental Financial Commitment" means all of the following:

(1) the irrevocable written commitment by PBC to pay all Capital Costs of the Project Expansion, using funds raised through the sale of such portions of its Water Entitlement pursuant to Subsection C of Section Three of Ordinance 109 (combined with any funds which may be independently committed by PBC, IRWUG, CAWD, PBCSD, or any other entity willing to commit funds to the Capital Costs of the Project Expansion), and to continue to pay the Net Operating Deficiencies of the Project until the Certificates of Participation (and any bonds or other obligations issued by any Public Participant to finance such costs) have been paid in full (or for any shorter periods as permitted by MPWMD), and to continue to pay all Ancillary Project Costs; and

(2) the written representation by each of PBC, CAWD, and PBCSD that each is prepared and intends forthwith to commence construction of the Project Expansion and to proceed diligently therewith until the Project Expansion is Completed.

"Terminate" means the withdrawal, without formal MPWMD action, of authority to act as previously provided by a valid permit or water service connection, whichever is applicable.

"Trust Agreement" means the Trust Agreement by and between First Trust of California, National Association, as Trustee and MPWMD dated as of November 1, 1992 relating to \$33,900,000 Variable Rate Demand Certificates of Participation (Wastewater Reclamation Project) Series 1992, as it may be amended from time to time.

"Water Entitlement" means an aggregate of 400-380 acre feet per year (or less) of potable water, and in no event more than fifty (50%) percent of the total amount of Franchise Water, which shall be the maximum portion of the Franchise Water has been dedicated (as evidenced by Water Use Permits issued pursuant to Ordinance No. 39, the Resolution, and the Fiscal Sponsorship Agreement) which may be dedicated to land within the jurisdiction of the District MPWMD for the purpose of providing for the payment of the Capital Costs, Ancillary Project

Costs, and Net Operating Deficiencies of the ~~Original Reclamation~~ Project. Ordinance No. 109 provides a process by which a portion of the Water Entitlement held by PBC may be separately sold and conveyed and thereby be dedicated to other land within the Del Monte Forest with the proceeds therefrom to be applied to the costs of the Project Expansion and the Original Project as more specifically described therein.

"Water Purchase Agreement" means the Water Purchase Agreement by and among MPWMD, CAWD, and PBCSD dated as of November 1, 1992, as it may be amended from time to time.

"Water Use Permit" means a writing from ~~the District~~ MPWMD which evidences the irrevocable dedication of the Water Entitlement as a present vested property right enuring to the use and benefit of one or more of the Benefitted ~~Parcels~~ Properties. A Water Use Permit shall by non-discretionary ministerial action, cause the present Expansion/Extension of the Cal-Am water distribution for Benefitted Properties upon designation of the location of use, and upon payment of applicable connection fees and charges. A Water Use Permit shall take the place of and be used instead of an Expansion/Extension Permit upon any Benefitted Parcel Property as relates to the use of any portion of the Water Entitlement.

~~Added by Ordinance No. 39 (2/13/89); amended by Ordinance No. 71 (12/20/93)~~

Section Five: Agreements to Provide for Water Entitlement and to Guarantee the Payment of Project Capital Costs and Net Operating Deficiencies

The General Manager is authorized to negotiate and, subject to the prior approval by the Board, to execute a Supplemental Financing Agreement with PBC, and such further agreements with Cal-Am and PBC as are necessary or desirable,

(a) to provide the terms and conditions upon which portions of the Water Entitlement will be conveyed by PBC to, and used on, Benefitted Properties not owned by PBC as of the date that this ordinance is adopted in the manner provided in this ordinance;

(b) to provide the terms and conditions upon which PBC shall attempt to raise the Supplemental Financial Commitment from which all Capital Costs of the Project Expansion shall be paid (primarily from the proceeds received by PBC from any separate conveyance of a portion of PBC's Water Entitlement as described in Subsections C or D of Section Three of this ordinance); and

(c) to provide the terms and conditions specifying the procedure to be followed once PBC has, through the sale of such portions of its Water Entitlement pursuant to Subsection C of Section Three of Ordinance 109, raised funds which are sufficient (combined with any funds

which may be independently committed by PBC, IRWUG, CAWD, PBCSD, or any other entity willing to commit funds to the Capital Costs of the Project Expansion) to pay for the Capital Costs of the Project Expansion, and the procedure by which PBC shall forthwith make the Supplemental Financial Commitment (as defined herein) and shall give notice thereof to MPWMD.

(d) to provide the terms and conditions upon which PBC shall assure and guarantee, with minimal fiscal risk to MPWMD or any other Public Participant, payment of the Net Operating Deficiencies of the Project as a whole.

(e) to provide terms and conditions specifying the procedures to be followed if MPWMD Board determines pursuant to subsections A.8 and A.9 of Section Three that PBC shall stop selling portions of its Water Entitlement, or if such determination is otherwise unacceptable to PBC, PBC shall, within a specified period of time acceptable to MPWMD after the effective date of such determination, either (1) disburse the monies received from separate sales of portions of its Water Entitlement in the manner provided in the agreement, or (2) file suit challenging such determination in Mandamus or other available remedy based solely on evidence presented to MPWMD Board, and, notwithstanding the provisions of section 394 of the Code of Civil Procedure, timely prosecute such case to judgment in the Monterey County Superior Court.

MPWMD will cooperate with PBC and Cal-Am in securing any approval required from the California Public Utilities Commission that may be necessary or desirable in connection with the Supplemental Financing Agreement or any such further agreements.

The Supplemental Financing Agreement shall provide for the payment, of any expenses incurred by MPWMD to account for and record changes in the Water Entitlements following issuance of new Water Use Permits, to verify water use capacity pursuant to Rule 23, to otherwise monitor compliance with or to enforce water usage pursuant to applicable laws, ordinances, and regulations, and to make such determinations concerning adjustments, and to implement and enforce the adjustments, to Water Use Permits that may be required in 2075.

The Supplemental Financing Agreement shall provide reasonable controls over expenditures and accounting of expenditures and shall not require the Fiscal Sponsor to incur any cost or liability for changes which expand the scope of the Project beyond the Project Expansion.

The Supplemental Financing Agreement shall not affect the Water Entitlement evidenced by the issuance of Water Use Permits issued by MPWMD as of the date that this ordinance is adopted, or the Financial Commitment made by PBC (concerning the Original Project) in the Fiscal Sponsorship Agreement, or the acknowledgement thereof by MPWMD. MPWMD shall agree not to amend the provisions of this ordinance in any manner which would impair the interest of such Fiscal Sponsor or any successor or assign.

The failure to enter into the Supplemental Financing Agreement or a further agreement with PBC and/or Cal-Am with respect to undertaking the Project Expansion shall in no way diminish or affect PBC's or any Owner's rights or obligations under Ordinance No. 39, any Water Use Permit issued thereunder, or any agreement entered into pursuant thereto.

Section Six: Agreements with Public Participants

The General Manager is authorized to negotiate and, subject to the prior approval by the Board, to execute a Supplemental Construction and Operation Agreement, and such agreements as are necessary or desirable, to provide for the respective construction, equipping and operation of the Project Expansion by CAWD and PBCSD in conjunction with the continuing operation and maintenance of the Original Project by CAWD and PBCSD, respectively. Such agreement(s) shall become operative once the Supplemental Financial Commitment is provided or such earlier date upon which the parties thereto agree, and shall specify (1) water quality standards deemed by the Recycled Water users, CAWD, and PBCSD to be suitable for irrigation of all portions of the Recycled Water Irrigation Areas, and (2) authorize the Recycled Water users to enforce the obligations of CAWD and/or PBCSD, as the Project operators of the Project Expansion, for the delivery of Recycled Water from the Project to such Recycled Water users to meet all of their irrigation requirements except during an Interruption as defined herein, and (3) a timeline for performance of the Project Expansion (measured from the time the Supplemental Financial Commitment is provided), and (4) the obligation of the appropriate parties to Complete the Project Expansion in accordance with the objective of the Project Expansion to provide sufficient quantities of Recycled Water of a quality suitable for irrigation of even the most water quality-sensitive plants on the Recycled Water Irrigation Areas, and thereby to completely eliminate the use of potable water for such irrigation (except during an Interruption as defined in

this ordinance), and (5) shall address the ownership of surplus Recycled Water in the manner set forth in the Construction and Operation Agreement or some other manner acceptable to MPWMD. Such agreement(s) shall also specify that all entities participating in the Project Expansion shall use their best efforts, both individually and collectively, so that the Project Expansion shall be Completed within two calendar years after Pebble Beach Company gives notice of the Supplemental Financial Commitment. This two year period shall be included in, and provide the framework for, the timeline to be set forth in the agreement(s).

Such agreements shall provide that (1) any party dissatisfied with the determination made following the procedures specified in subsection F of Section Four of this ordinance shall, within a specified period of time acceptable to MPWMD after the effective date of the determination, file suit challenging such determination in Administrative Mandamus (or other available remedy based on the Administrative Record) and, notwithstanding the provisions of section 394 of the Code of Civil Procedure, timely prosecute such case to judgment in the Monterey County Superior Court, and (2) each party shall continue to comply with the determination unless and until expressly relieved from doing so by written order from the court.

Such agreements shall provide that the only funds of MPWMD to be used to pay for the construction, equipping and operation of the Project Expansion by CAWD and PBCSD, respectively, or the operation and maintenance of the Original Project by CAWD and PBCSD, respectively, shall be the Operating Revenues received by MPWMD.

All financial commitments (including the possible issuance of refunding bonds or other obligations) under the Fiscal Sponsorship Agreement for the continuing operation and maintenance of the Original Project by CAWD and PBCSD, respectively, shall be unaffected by this ordinance.

Section Seven: Purchase of Recycled Water from the Project

The General Manager is authorized to negotiate and, subject to the prior approval by the Board, to execute an Agreement for Sale of Recycled Water with each owner of one or more Recycled Water Irrigation Area(s) providing for the purchase and sale of Recycled Water from the Project. Each such Agreement for Sale of Recycled Water shall:

(1) require the Recycled Water users to purchase such Recycled Water for a term not less

than thirty (30) years, provided that it shall not become operative until the Project Expansion is Completed; and

(2) authorize the the Recycled Water users to enforce the obligations of CAWD and/or PBCSD, as the operators of the Project, for the delivery of Recycled Water from the Project to such Recycled Water users to meet the water quality standards deemed by the Recycled Water users, CAWD, and PBCSD to be suitable for meeting all of their irrigation requirements except during an Interruption as defined herein; and

(3) prohibit such Recycled Water users, after Completion of the Project Expansion, from using any potable water to irrigate any portion of the Recycled Water Irrigation Areas except as specified in subsection F of Section Four during an Interruption as defined herein, provided, however, that the use of potable water during any such Interruption shall be subject to such further restrictions as may be imposed by the Board upon other golf courses and other similarly situated users within MPWMD in response to water shortage emergency declared by the Board pursuant to Section 332 of the Monterey Peninsula Water Management District Law throughout the duration of such water shortage emergency; and

(4) provide for the timely payment and collection of revenues for Recycled Water; and

(5) after the expiration of the Financial Commitment of the Fiscal Sponsor, require MPWMD to impose rates and charges for Recycled Water sufficient to maximize payment for Operation and Maintenance Expenses and Capital Costs of the Reclamation Project, subject to the limitation set forth in Water Code section 13550 that the price for Recycled Water shall be comparable to the cost of supplying potable domestic water except as the owners of the Recycled Water Irrigation Areas may agree in writing otherwise;

(6) provide that (a) any party dissatisfied with the determination made following the procedures specified in subsection F of Section Four of this ordinance shall, within a specified period of time acceptable to MPWMD after the effective date of the determination, have the right to file suit challenging such determination in Administrative Mandamus or other available remedy based on the Administrative Record and, notwithstanding the provisions of section 394 of the Code of Civil Procedure, timely prosecute such case to judgment in the Monterey County Superior Court, and (b) each party shall comply with the determination unless and until expressly

relieved from doing so by written order from the court.

Section Eight: Authority to Void Agreements

The Supplemental Financing Agreement, the Supplemental Construction and Operation Agreement, and the Agreements for Sale of Recycled Water (as described in Sections Five through Seven) shall each authorize, but not require, each party thereto to declare that agreement void on the terms further described in that agreement if either (1) the Supplemental Financial Commitment has not been made by PBC, CAWD, and PBCSD within eighteen (18) months after the effective date of this ordinance, or (2) construction has not begun on the Project Expansion within twelve (12) months after the Supplemental Financial Commitment has been made by all parties.

Section Nine: Severability and Effective Date

If any subdivision, paragraph, sentence, clause or phrase of this ordinance is, for any reason, held to be invalid or unenforceable by a court of competent jurisdiction, such invalidity or unenforceability, shall not affect the validity or enforcement of the remaining portions of this ordinance, or of any other provisions of the Monterey Peninsula Water Management District Rules and Regulations except as set forth in the following sentence.

It is MPWMD's express intent that Ordinance No. 109, the Supplemental Financing Agreement, the Supplemental Construction and Operation Agreement, and the Agreements for Sale of Recycled Water, together comprise a single transaction, and therefore, this Ordinance shall not become effective unless and until each of the agreements referenced in the preceding sentence is fully executed by each signatory thereof.

Section Ten: Sunset Date

This Ordinance shall have no sunset date, provided however, if any one or more of the Supplemental Financing Agreement, the Supplemental Construction and Operation Agreement, and/or the Agreements for Sale of Recycled Water (as described in Sections Five through Seven of this Ordinance) is or are declared void by any party thereto pursuant to the terms thereof, and

the parties to each agreement thus declared void do not execute a successor or replacement agreement therefor within 90 days, this Ordinance and the other agreements described hereinabove shall thereupon cease to have any force or effect.

On motion by Director Foy, and second by Director Knight, the foregoing ordinance is adopted upon this 27th day of May, 2004, by the following vote:

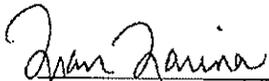
AYES: Directors Edwards, Foy, Knight, and Pendergrass

NAYS: Directors Lehman and Markey

ABSENT: Director Potter

I, Fran Farina, Secretary to the Board of Directors of the Monterey Peninsula Water Management District, hereby certify the foregoing is a full, true and correct copy of an ordinance duly adopted on the 27th day of May, 2004.

Witness my hand and seal of the Board of Directors this 29th day of June, 2004.



Fran Farina, Secretary to the Board

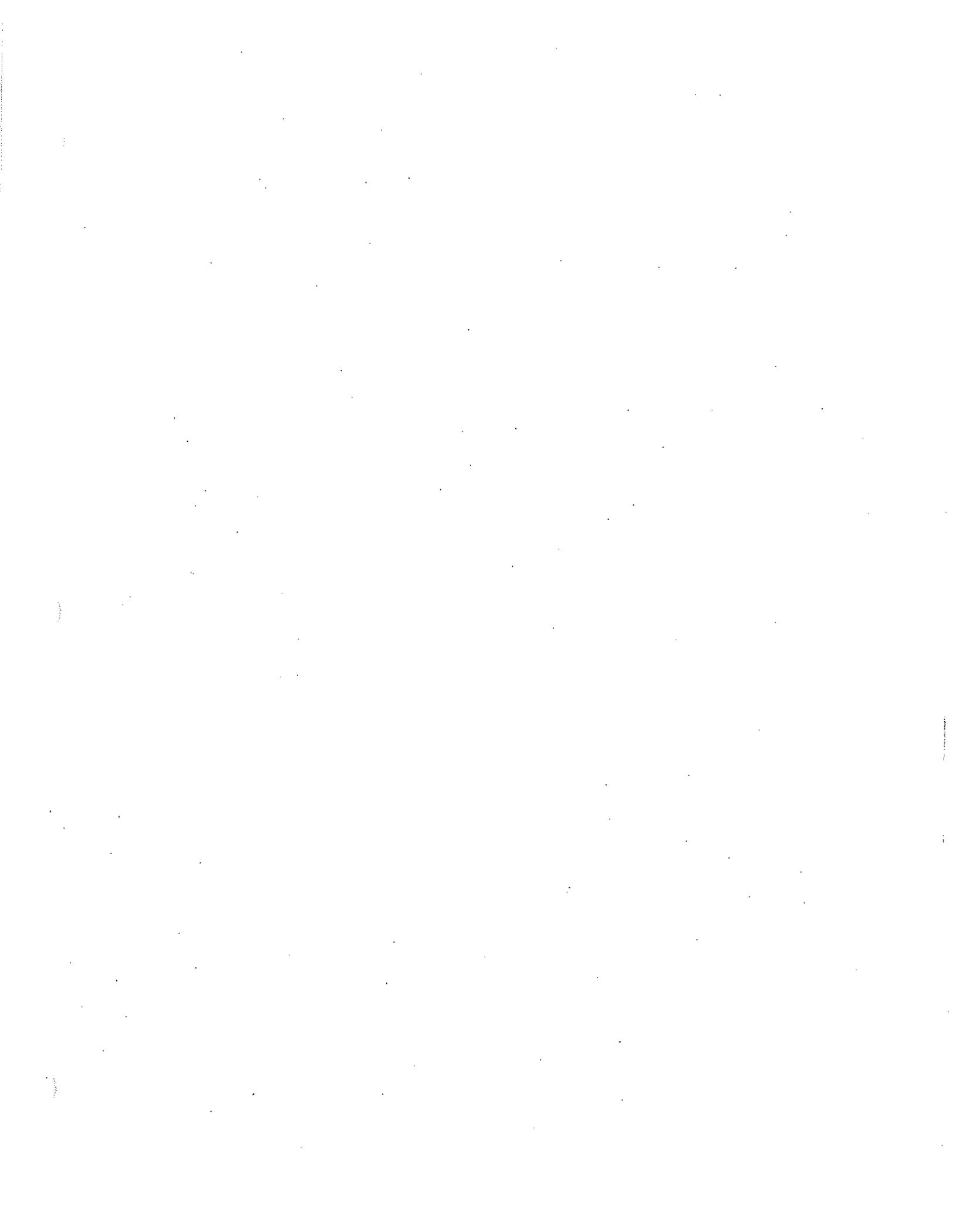


EXHIBIT A

BENEFITED PROPERTIES

All real property within the boundaries of the unincorporated portions of the Del Monte Forest as defined in Exhibit "B" and such additional real property as has been designated and included as Benefited Properties under the Fiscal Sponsorship Agreement pursuant to amendments thereto as approved by the MPWMD Board before the date that this ordinance is adopted and Rule 23.5 is amended thereby.

